United States Court of Appeals

for the Second Circuit

APPENDIX

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United States Court of Appeals
FOR THE SECOND CIRCUIT

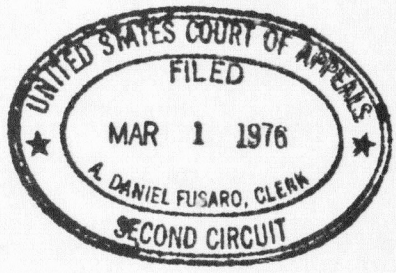
TERRY GILLIAM, GRAHAM CHAPMAN, TERRY JONES, MICHAEL PALIN, JOHN CLEESE and ERIC IDLE, individually and collectively performing as the professional group known as "MONTY PYTHON,"

Plaintiffs-Appellants-Appellees,

against

AMERICAN BROADCASTING COMPANIES, INC.,

Defendant-Appellee-Appellant.



INTERLOCUTORY APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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Relevant Docket Entries.

12-15-75	1	Filed Complaint and issued summons.
12-16-75	2	Filed Order to Show Cause for Hearing of Pltffs. application for preliminary injunction pursuant to Rule 65 FRCP. Ret. 12-16-75.
		* * * * * *
12-22-75	5	Filed Defts. Notice of Appeal from order of 12-22-75. (mailed notice).
12-22-75	6	Filed Supplemental Order. Ordered that deft. not proceed with the broadcast as indicated. Lasker J. (mailed notice).
		* * * * * *
12-31-75	8	Filed Affidavit in opposition to pltffs. application for preliminary injunction, by Richard N. Burns.
		* * * * * *
1- 5-76	11	Filed Pltffs. Notice of Appeal from the Order dtd. 12-19-75. (mailed notice).
		* * * * * *
2- 5-76	15	Filed transcript of proceedings dated December 19, 1975.
2- 5-76	16	Filed transcript of proceedings dated December 22, 1975.

Complaint.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiffs, by their attorneys, Abeles Clark and Osterberg, respectfully allege:

1. Plaintiffs, other than plaintiff Terry Gilliam, are British subjects and plaintiff Terry Gilliam is a citizen of the State of Minnesota (plaintiffs are hereinafter sometimes collectively referred to as the "Group").

2. Upon information and belief, defendant is a New York corporation.

3. The Group renders services as professional entertainers and have become widely associated in the United States with their collective, professional name "Monty Python" as a result of their extensive commercial success in the United States through television and motion picture performances, phonograph records and books.

FOR A FIRST CLAIM

4. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars. Jurisdiction is based upon 28 U.S.C. § 1332.

5. Plaintiffs, respectively, are the sole authors of certain scripts used by them in rendering entertainment services as "Monty Python", specifically including six 30-minute scripts presently identified as the "fourth series" and initially designated by contract as "Project

Nos. 1154-2451-6'' of The British Broadcasting Corporation (which scripts are hereinafter collectively referred to as "Said Scripts").

6. The members of the Group respectively are the sole copyright owners of all right, title and interest in and to Said Scripts, including under the common law of each of the United States.

7. Said Scripts are unpublished, copyrighted matter under the common law of each of the United States and have not been commercially exploited anywhere in the world for any purpose except (a) pursuant to written license agreement between the Group and The British Broadcasting Corporation whereunder television episodes of the script material were broadcast over television facilities outside of the United States, and (b) a single network television broadcast by defendant of excerpts from three television episodes of certain of Said Scripts (the excerpts from Said Scripts broadcast by defendant are hereinafter collectively referred to as the "Broadcast Excerpts").

8. Prior to December 1, 1975, without any authorization from the Group, defendant publicly performed the Broadcast Excerpts by means of a network television broadcast.

9. Defendant is preparing to, and intends to, publicly perform on or about December 26, 1975, additional excerpts from Said Scripts by means of a nationwide television broadcast.

10. Defendant thereby has infringed the common law copyrights of the Group in Said Scripts and intends to hereafter infringe the common law copyrights in Said Scripts.

11. Plaintiffs have been irreparably damaged by defendant's public performance of the Broadcast Excerpts, and in an amount computed to be not less than $500,000.

12. The Group have notified defendant of its infringing acts, but defendant has refused to discontinue the same.

13. Plaintiffs have no adequate remedy at law for defendant's infringing acts and, unless defendant is enjoined from any further unauthorized uses of Said Scripts, plaintiffs will suffer additional irreparable injury.

FOR A SECOND CLAIM

14. This claim arises under Section 43(a) of the Lanham Act relating to trademarks and unfair competition entitled "FALSE designations of origin and false descriptions forbidden" (15 U.S.C. § 1125(a)), and involves false designations of origin and false descriptions and representations in commerce. Jurisdiction of this claim is based upon 28 U.S.C. § 1338(a).

15. Repeat and reallege each and every allegation contained in paragraphs "5", "8", and "11" through "13".

16. Each of Said Scripts consists of original material painstakingly unified by the members of the Group into six cohesive 30-minute episodes.

17. The deletion of any portion of any episode from a public performance substantially alters the artistic nature of the material and the quality of the professional services of the Group.

18. Defendant substantially altered the artistic nature of three of the six episodes constituting Said Scripts by

deleting a substantial portion thereof from public performance of the Broadcast Excerpts.

19. Defendant falsely represented in commerce that the Broadcast Excerpts were solely attributable to the creative writing and performances of the Group, although a substantial portion of the three episodes from which the Broadcast Excerpts were taken resulted from alterations made by defendant and the Broadcast Excerpts did not truly represent the entertainment talents and services of the Group.

20. Defendant is continuing to falsely represent in commerce that episodes taken from Said Scripts and substantially altered by defendant are solely attributable to the creative writing and entertainment services of the Group.

21. Said representations and descriptions were and are knowingly employed by defendant in commerce to falsely describe and represent the entertainment services of the Group, in disregard of the rights and professional reputation of the Group.

22. Plaintiffs have no adequate remedy at law and the said false representations and descriptions employed by defendant have caused, and will continue to cause, plaintiffs irreparable harm and injury.

FOR A THIRD CLAIM

23. Repeat and reallege each and every allegation contained in paragraphs "1" through "5", "7" through "9", and "16" through "22".

24. The use and proposed uses of Said Scripts by defendant constitute a distortion and mutilation of Said

Scripts and amount to unfair competition in violation of plaintiffs' rights.

25. Plaintiffs have been damaged by defendant's acts of unfair competition, in addition to the irreparable harm and injury, in an amount computed to be not less than $500,000.

WHEREFORE, plaintiffs demand:

A. That defendant and its respective agents, servants, employees, officers, subsidiaries and affiliates, and all persons and organizations acting in active concert or participation with defendant, be enjoined during the pendency of this action and permanently from directly or indirectly, on December 26, 1975, or at any other time, (a) broadcasting, (b) authorizing the broadcast of, (c) permitting the use of any of its facilities for the broadcast of, or (d) in any way contributing to the broadcast of, Monty Python material written or performed by any of plaintiffs and licensed by plaintiffs to The British Broadcasting Corporation, unless the use of the Monty Python material (i) is broadcast in its entirety as originally written and performed by plaintiffs, and broadcast by The British Broadcasting Corporation, and (ii) is in all other respects within the scope of the license between plaintiffs and The British Broadcasting Corporation authorizing the use of such material for television purposes;

B. That defendant pay to plaintiffs damages in the amount of $500,000 for its infringing acts set forth in the First Claim;

C. That defendant pay to plaintiffs damages in the amount of $500,000 for its acts of unfair competition set forth in the Third Claim;

D. That defendant account for all gains, profits and advantages respectively derived by defendant from (1) its false descriptions and representations and (2) its acts of unfair competition set forth in the Second and Third Claims respectively.

E. That plaintiffs recover of defendant their reasonable attorneys' fees, together with the costs of this action; and

F. That plaintiffs have such other and further relief as to this Court may appear just and proper.

ABELES CLARK AND OSTERBERG
By ROBERT C. OSTERBERG
A Member of the Firm
Attorneys for Plaintiff

Of Counsel:

INA LEA MEIBACH, Esq.

Order to Show Cause for Hearing of Plaintiffs' Application for Preliminary Injunction Pursuant to Rule 65 F.R.C.P.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the annexed copy of the complaint herein, and the annexed affidavits of Nancy Lewis and Robert C. Osterberg, with exhibits annexed, sworn to on the 15th day of December, 1975, the originals of which have been filed with the Court, it is

ORDERED, that defendant show cause before this Court in Room 1903 of the United States Courthouse for the Southern District of New York, Foley Square, New York, New York, on December 16, 1975, at 4:30 o'clock in the afternoon of that day, or as soon thereafter as counsel may be heard, why an order pursuant to Rule 65 of the Federal Rules of Civil Procedure should not issue herein granting a preliminary injunction pending the final hearing and determination of this action, enjoining defendant, and its respective agents, servants, employees, officers, subsidiaries and affiliates, and all persons and organizations in active concert or participation with said defendant, from directly or indirectly, on December 26, 1975, or at any other time, (a) broadcasting, (b) authorizing the broadcast of, (c) permitting the use of any of its facilities for the broadcast of or (d) in any way contributing to the broadcast of, Monty Python material written or performed by any of plaintiffs and licensed by plaintiffs to The British Broadcasting Corporation, unless the use of the Monty Python material (i) is broadcast in its entirety as originally written and

Order to Show Cause for Hearing of Plaintiffs' Application for Preliminary Injunction Pursuant to Rule 65 F.R.C.P.

performed by plaintiffs, and broadcast by The British Broadcasting Corporation, and (ii) is in all other respects within the scope of the license between plaintiffs and The British Broadcasting Corporation authorizing the use of such material for television purposes; and it is further

ORDERED, that due service of a copy of this order, and the papers upon which it is granted, including the summons and complaint, may be effected by Raymond Brody, in lieu of the Marshal, Pursuant to Rule 4(c) FRCP, by delivering copies to the office of the defendant's legal department at 1330 Avenue of the Americas, New York, New York 10019, on or before 5:30 P.M., December 15, 1975.

Dated: December 15, 1975, New York, New York.

/s/ MORRIS E. LASKER,
U.S.D.J.

Affidavit of Nancy Lewis, in Support of Motion.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

NANCY LEWIS, being duly sworn, deposes and says:

1. I am the American manager of the group of writers and entertainers collectively and professionally known as "Monty Python" (hereinafter referred to as the "Group") and have been such since April, 1975. For approximately two years prior thereto I was associated with the Group in various professional capacities. As manager I am responsible for the guidance of the American careers of the Group, their public relations and professional activities in the United States, including personal appearances, the making of recordings, and television engagements. This affidavit is submitted in support of plaintiffs' application for a preliminary injunction prohibiting defendant from proceeding with its planned television exhibition on December 26, 1975, of three Monty Python television episodes specially altered, mutilated and expurgated for purposes of exhibiting such episodes within a time period shorter than the original cumulative length thereof.

2. The Group, formed in 1969, consists of plaintiff Terry Gilliam, an American illustrator and artist residing in Great Britain, plaintiff Graham Chapman, a British physician, plaintiffs Terry Jones and Michael Palin, graduates of Oxford University and British professional

authors and writers, plaintiff John Cleese, a British lawyer, and plaintiff Eric Idle, a graduate of Cambridge University and a British professional author and writer. Plaintiffs met while engaged as writers of comedy material for The British Broadcasting Corporation (hereinafter referred to as "BBC"). "Monty Python" is a unique, fictional, arbitrary and fanciful name created by the group to identify itself and does not and is not intended to refer to any living person.

3. Commencing in 1969, the Group began to write scripts for episodes of a thirty-minute BBC television program which they entitled "Monty Python's Flying Circus" (hereinafter referred to as the "Episodes"). A total of forty-five Episodes, each thirty minutes in duration, based on the Group's scripts, have been produced and recorded on tape. The scripts are wholly original, owned exclusively by the Group, and those involved herein have never been published. The members of the Group have acted and performed in the television production of all of the Episodes. The Program has enjoyed and continues to enjoy wide acceptance and popularity among television viewers throughout the world. As a result, the Group has been the subject of a large volume of publicity and notoriety in the media. Annexed hereto as Exhibit 1 and made a part hereof is an article which appeared in the March 31, 1975 issue of *Newsweek Magazine* describing the Monty Python phenomenon which has swept the world in the last several years. Major articles on the Group have been carried in publications in the United States, including *Time Magazine, The New Yorker, New York Times, Variety, T.V. Guide, Philadelphia Enquirer, Women's Wear Daily, Washington Post, Chicago Tribune,* and by the major wire services. The Group has written and performed in two major motion picture productions

which have been exhibited throughout the United States. Six long-playing phonograph record albums have been produced embodying the Group's material and oral delivery thereof, four of which have been released in the United States.

In addition, the Group has authored two books, which have been published, and the Group has made live theatrical appearances in Great Britain and in Canada. The Group is scheduled to make personal appearances over a three-week period at the New York City Center in the spring of 1976.

4. A large number of the aforesaid thirty-minute Episodes have been exhibited over television in the United States. With the exception of KPRC-TV, Houston, Texas, and KLAS-TV, Las Vegas, Nevada, and affiliates of defendant, the Episodes have been carried exclusively over 133 non-commercial educational stations. As to many of these 133 stations, including WNET which reaches New York City, the Episodes have been among the most popular in their history. The Episodes have been shown on the public broadcasting stations and on stations KPRC-TV and KLAS-TV in their entirety without any alteration. Defendant, however, exhibited three of the Episodes on October 3, 1975 in an altered, mutilated and expurgated form without the Group's permission. Upon information and belief, defendant is planning to exhibit three additional Episodes on December 26, 1975, in a ninety-minute period, and to delete upwards of fifteen minutes of playing time from such Episodes to allow for commericals, all without the approval of the Group.

5. The Group, as proprietors of the scripts on which such Episodes are based, entered into written agreements with the BBC, granting it the right to produce and tele-

vise performances of the scripts. Upon information and belief, Time-Life Films is the distributor in the United States of BBC television productions. In the spring of 1975, I was informed by representatives of the distributor that it desired to assemble for defendant a ninety-minute compilation of sketches and material to be extracted from approximately thirteen Episodes. The Group unanimously rejected the proposition. It appears that thereafter defendant obtained certain rights to televise six Episodes in their entirety. For the purpose of confirming that there would be no alteration of the Episodes so acquired, a Group representative in London wrote to the BBC on August 1, 1975 as follows:

"David Spiller, Esq.,
BBC Enterprises
Villiers House, The Broadway
London W5 2PA

Dear David Spiller:

Further to my letter of 9th June concerning Monty Python and the American compilation, I gather that the BBC have in fact done a deal with ABC Television for two ninety minute compilations. If this is so I assume that the programmes are made up of all six episodes of series IV and that no alterations have been made to them. I would be grateful if you would confirm this to me.

Yours sincerely,

Jill Foster"

Affidavit of Nancy Lewis.

On August 6, 1975 the BBC responded as follows:

"Jill Foster
Fraser & Dunlop Scripts Ltd.
91 Regent Street
London W.1R 8RU

Dear Jill Foster:

Monty Python Series IV

Thank you for your letter dated 1st August, 1975. The situation regarding the A.B.C. deal for Monty Python is that all six episodes of the fourth series will be shown in two 90 minutes shows i.e. 3 episodes in each.

I have been assured by our people in New York that each episode will be shown in its entirety.

Sincerely,

D. M. Spiller"

It having occurred to the London Group representative that commercials might be carried, a letter was sent to the BBC on September 5, 1975 reading as follows:

"David Spiller, Esq.
BBC Enterprises
Villiers House, The Broadway
London W5 2PA

Dear David Spiller:

Thank you for your letter of 6th August concerning the American sale of MONTY PYTHON SERIES IV. I was perfectly satisfied with your answer until, in my bath yesterday, it occurred to me that out of this ABC

slot of ninety minutes, something in the region of twenty four minutes will be devoted to commercials. How then I wonder can each episode be shown in its entirety?

Yours sincerely,

Jill Foster''

BBC replied as follows on September 12, 1975:

''Fraser & Dunlop (Scripts) Ltd
91 Regent Street
London W.1

For the attention of Ms. Jill Foster

Dear Ms. Foster: MONTY PYTHON: SERIES 4

I have consulted our Sales staff about the query raised in your letter of 5th September, 1975.

We do not know the situation regarding the length of commercial breaks that ABC intend to make, nor indeed if the programme is receiving sponsorship as opposed to spot advertising. We can only reassure you that ABC have decided to run the programmes 'back to back', and that there is a firm undertaking not to segment them.

Yours sincerely,

David Spiller
Business Department

cc Harbottle & Fitch
Monty Python''

Despite those assurances, defendant, on October 3, 1975 exhibited three of these Episodes, mutilated and can-

nibalized. The alterations totally destroyed the artistic and structural integrity of the scripts by deleting portions crucial to the Group's comedy and execution thereof.

6. The Group viewed a videotape copy of the October 3, 1975 ninety-minute broadcast for the first time late in November, in London. They were appalled at what had been done to their work. Not only had defendant removed many of the best portions, but it had retained material which, with the deletions, became weak, pointless and uncharacteristic of the Group. A volume of critically adverse fan mail ensued. The *Variety* television critic observed that it appeared material was presented out of context, and questioned the selection of material. A copy of the Variety review is annexed hereto as Exhibit 2, and made a part hereof. Other critics emphasized that these thirty-minute Episodes are unsuitable for such alteration. Annexed hereto as Exhibits 3 and 4, and made a part hereof, are copies of such articles reproduced from *The New York Times,* October 5, 1975 and *The Syracuse New Times,* October 26, 1975.

I was aware that a second ninety-minute broadcast was planned by defendant utilizing the three remaining Episodes. Although we were assured by defendant that a copy of the proposed broadcast would be provided the Group in London for review on or before December 2, 1975, it was not provided. It was not until on or about December 2, 1975, however, that the Group and I learned that the next broadcast was scheduled for December 26. 1975. Thereupon, the Group's London solicitor advised the Group to seek legal redress here. We took advice from New York counsel and on December 12, 1975 engaged trial counsel to commence this action.

7. The Group has sustained severe and irreparable injury to its reputation and professional career in the

United States by reason of defendant's October 3, 1975 broadcast, and will incur further such injury should defendant be permitted to proceed with its proposed December 26, 1975 broadcast. Defendant's broadcasts are wholly unrepresentative of the Group's works and performances and portray the Group in a manner which is detrimental to its popularity and success in this country. During the past six years, plaintiffs have succeeded in establishing an international reputation for their unique form of comedy, deriving essentially from the entirety of their thirty-minute Episode format. Defendant's alterations of these programs so distort the underlying works that they cease to convey this comedy, and do not truly represent "Monty Python" as it is known and respected throughout the world. Rather, they result in a composite program which does not contain the high quality of humor with which the Group has heretofore been associated.

8. This application is being brought on by order to show cause since there is need for immediate relief and the time within which to make a regularly noticed motion is too short.

9. There has been no prior application for the relief sought herein.

WHEREFORE, it is respectfully submitted that plaintiffs' motion should be granted in all respects.

(Sworn to by Nancy Lewis, December 15, 1975.)

Exhibit 1, Article Newsweek, Annexed to Foregoing Affidavit.

ENTERTAINMENT

Pythonmania

By even the mildest standards of consumerism, the customer had a legitimate squawk. The newly purchased parrot he was returning to the pet shop was obviously deceased, in fact demonstrably dead. "No, it's just still," blithely explained the shop's owner, "because it's a Norwegian parrot and is pining for the fjords." To test that thesis, the customer bashed the bird's head against the counter, then disgustedly flung it to the floor. The bird lay totally inert. "It's *not* pining," shrieked the customer. "It's passed on. This is an *ex-parrot*!" Finally, the shopkeeper agreed to replace his defective product—but there was one hitch. "We're all out of parrots," he reported after a long search. "How about a slug?"

That bit of lunacy is from "Monty Python's Flying Circus," an outrageously anarchic, British-made comedy series that appears destined to become the most improbably successful program in the history of American public television. The first thirteen episodes, which were made in 1969-70 and premiered in the U.S. last October on fifteen PTV stations, outrated such popular British imports as "Upstairs, Downstairs" and "The Ascent of Man." Accordingly, a second cycle of Monty Pythons will begin running on April 6, this time on more than 50 PTV outlets. Under-35 viewers, in particular, are taking to the show the way they once adopted "Laugh-In." Michael Winship, a spokesman for New York City's WNET, claims that Pythonmania "threatens to turn into something resembling Beatlemania."

Idiocies: There is no Monty Python (a fictitious name chosen to evoke a smarmy persona) but the show is a circus of sorts, and its six-man troupe flies to the nearest reaches of dementia. Their regular characters include transvestite lumberjacks, double-visioned mountain climbers, drill sergeants who teach recruits how to protect themselves against assault by fresh fruit and a street gang of old ladies known as the Hell's Grannies. The idiocies of British bureaucracy are represented by the Society for Putting Things on Top of Things and the Ministry of Silly Walks, which dispenses government development grants to people who—well, walk silly. There is also an occasional rugby match, featuring such combatants as the Bournemouth Gynecologists Association and the Watford Long John Silver Impersonators.

Before invading America, Monty Python was a five-year fixture on the British Broadcasting Corp. That achievement is all the more remarkable since Python's favorite target is the BBC itself. It has spoofed stodgy BBC talk shows by presenting debates between the Minister of Home Affairs ("His hair," intones the moderator, "is by Roger") and a small patch of brownish liquid ("possibly creosote"). In an upcoming send-up, a BBC-style cultural program will examine the works of Scottish poet Ian McTeagle, whose "brilliantly allegorical" masterpiece opens with the lines, "Send me a couple of quid 'til Thursday . . . I'm absolutely skinned."



British spoofs: Minister of Silly Walks

The perpetrators of such subversive silliness are five young products of Oxford and Cambridge and an American artist named Terry Gilliam, whose bril-

Exhibit 1, Article Newsweek, Annexed to Foregoing Affidavit.

liantly surrealistic animations for the show have won him a cult within a cult. The gang's ringleader is John Cleese, a 35-year-old Cambridge law graduate. Cleese had long been intrigued by the notion of a totally free-form TV show, but it was not until he hooked up professionally with four college cronies that Monty Python uncoiled. Since then, the group has also produced two best-selling books, five record albums and two hit films, the second of which—titled "Monty Python and the Holy Grail"—is currently convulsing audiences in Los Angeles.

Daffy: Cleese & Co. are vaguely puzzled by Python's triumphant reception in the U.S. The series defies every rule of standard American TV comedy—skits weave their way through episodes without punch-line resolutions, and its dryly daffy tone seems peculiarly British. Society's pretensions, on the other hand, are as universal as the human enjoyment of their deflations. Nothing is sacrosanct to the Pythons, especially their own work.



The Pythons (chief Cleese in chef's hat): New dimensions of dementia

Exhibit 1, Article Newsweek, Annexed to Foregoing Affidavit.



Jones in drag: Nothing sacrosanct

Particularly iconoclastic sketches are frequently interrupted by a Python portraying an irate viewer registering a protest. "That's part of our self-defense," explains Terry Jones, who specializes in playing public officials in drag. "And the show keeps moving so fast that the viewer doesn't have time to formulate a criticism of any of it."

While on a U.S. promotional tour last week, the Pythons had a chance to observe American TV's sitcom genre. "The fact that Norman Lear is considered extraordinary," sniffed 31-year-old Michael Palin, "is, to me, quite extraordinary." Certainly, not even Lear at his most damn-the-mass-audience daring would have approved the opening skit in the Python's third thirteen-week series, which will hit the U.S. in October. It presents the first All-England Summarized Proust Competition, in which each contestant is called on to give a brief synopsis of "A La Recherche du Temps Perdu"—once in a swimsuit and once in evening dress.

—HARRY F. WATERS

Exhibit 2, Article Variety, Annexed to Foregoing Affidavit.

VARIETY
NEW YORK, N. Y.
W. N/A

OCT 8 1975

THE MONTY PYTHON SHOW
(Wide World of Entertainment)
With Michael Palin, Graham Chapman, Terry Jones, Eric Idle, Terry Gilliam
Supplier: BBC&Time-Life Films
Producer: Ian McNaughton
90 Mins., Fri., 11:30 p.m.
ABC-TV

"Monty Python's Flying Circus" has made believers of many Americans who watched the BBC-produced show on public television last season. Believers, that is, in a British sense of humor understandable on this side of the Atlantic.

So impressive have Nielsen ratings been for the antic series that public stations around the country have signed for a new flight and have been joined by some commercial outlets.

Last summer, ABC bought some of the episodes which had not played this country and put them into a spot vacated by rock concerts. Obvious hope was that the series would catch the same young audience as the rockers had. Whether it worked or not is still in the computer, but as a show, it would seem to have exactly that appeal.

Some of the sketches — particularly a hunt for the "Worst Family in Britain" and the panel which selected the winner — were tight and funny throughout. Others, like a history of ballooning, were overlong and less pointed. But even there, there were moments of antic hilarity which made the whole worth watching.

A question must be raised on how selections were made and whether they were pulled out of their original contexts to make a 90-minute pastiche — overall length of show seemed a little long for continuous laughter. —*Fob.*

Exhibit 3, Article New York Times, Annexed to Foregoing Affidavit.

TV Notes: Where Have All

By LES BROWN

Ted Kotcheff, the film director ("The Apprenticeship of Duddy Kravitz"), recently observed at a media symposium in Canada that the most damning thing to be said about American television is that the country's best writers and directors won't work for it. Kotcheff developed his career in the Canadian TV system and, though he mainly makes theatrical films now, still crosses back into television from time to time—in Canada.

The rebuff of television by American artists is emphasized, of course, if not always overtly noted, every time Harold Pinter, Alun Owen or some other notable literary figure writes a piece especially for British television, or when such cinematic luminaries as Ingmar Bergman and Federico Fellini create programs for Swedish or Italian television like "Scenes From a Marriage" or "The Clowns." Italy's Roberto Rossellini has all but given up motion pictures to concentrate on television.

In this country, the traffic runs one way: away from television. Directors who make names for themselves on the tube—William Friedkin, Sidney Lumet and John Frankenheimer, for a few conspicuous examples—leave to make motion pictures at the first opportunity, never to return. With writers incubated by the medium it is mostly the same, and even worse with novelists or playwrights who have achieved some degree of recognition. While they may be persuaded to write a film script, almost never do they agree to write a television show. Truman Capote is one who did give it a whirl, but that was several years ago, and he apparently has not found the niche he had sought in the medium.

Robert Howard, president of NBC-TV, recently bemoaned the fact that most network series every year are turned out by the same corps of writers, directors and producers, even though many have long histories of flops. The networks wish for an infusion of new—at least to TV — proven creative talent, he said, but the Hollywood studios that supply the shows seem unable to attract such talent to work in the medium.

Howard suggested that this was probably because the grind of television, the need to crank out scripts and programs week after week on short production schedules, was more than successful writers and directors were willing to suffer. The inference to be drawn was that those who year after year return with new bummers keep finding the opportunities because they know the criteria of commercial TV and are able, and willing, to devote themselves to a series that just may catch on with the viewing public.

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Tom Gries, one writer who kicked the television habit for films, explained some years ago that he did it to escape the "punishment" of meaningless work. "Network fears and Government pressures have smeared the tube with chicken fat," he said.

Another view was expressed privately last week by Frank Price, president of Universal Television, the leading supplier of programs to the networks, with 14½

Exhibit 3, Article New York Times, Annexed to Foregoing Affidavit.

the Creative Types Gone?

hours a week in prime time this season.

"There apparently is something demeaning about having your show broken up by commercials," Price said. "Most creative people who can avoid it do so, preferring the wholeness of a movie which doesn't have the appearance of existing to sell products."

"There's also another reason," he went on. "With a movie, the artist gets the credit. With a television show, the network does."

"Python's" Plight

Although it has clearly found gleeful acceptance from viewers in this country, "Monty Python's Flying Circus," the zany half-hour weekly series from the British Broadcasting Corporation, seems destined to play mainly on public television outlets here. Time-Life Films, which distributes it in syndication, has been offering "Python" to commercial stations too, but so far only one—KPRC-TV in Houston—has bitten (or been bit).

•

Other stations have backed away for the most bizarre of reasons: the programs are considered the wrong length for commercial television because they don't fit into the scheme of time slots on this side of the Atlantic. The typical half-hour American show actually runs 25 or 26 minutes, in order to accommodate commercials. The "Python" episodes, however, are all about 30 minutes long, and Time-Life Films will not permit them to be cut. Therefore, allowing for commercials, the show is likely to run 34 to 36 minutes, depending on how commercial a station may choose to be.

Everything runs by the clock in commercial television, and somewhere it is written that all programs must start precisely on the hour or half-hour. KPRC-TV, however, has found it can accommodate the "Python" show by slotting it after the late news on Saturday nights and following it with a movie at 11:34 or thereabouts. This proceeds from the theory that late-hour scheduling can be more elastic than earlier times of day, especially on weekends. The series started airing in Houston last night. If the ratings come up strong, other stations may find it possible to overlook the uniqueness of "Python," whose ultimate contribution to United States television might be a breaking of the slavish adherence to strict timetables.

No-Show Cops

The all-time favorite TV series among people working in, or associated with, the television industry is "Perry Mason," according to a poll recently conducted by the Broadcast Information Bureau. Next in order are "Your Show of Shows," "Star Trek," "Playhouse 90" and "The Mary Tyler Moore Show." Dramatic series like "Studio One," "Alfred Hitchcock Presents" and "The Forsyte Saga" are prominent in the Top 40 list, but not a single police show ranks there—which perhaps reveals something about how the preferences of broadcast executives differ from what they serve up to viewers. ■

SYRACUSE NEW TIMES, OCTOBER 26, 1975

--NOT LAUGHING

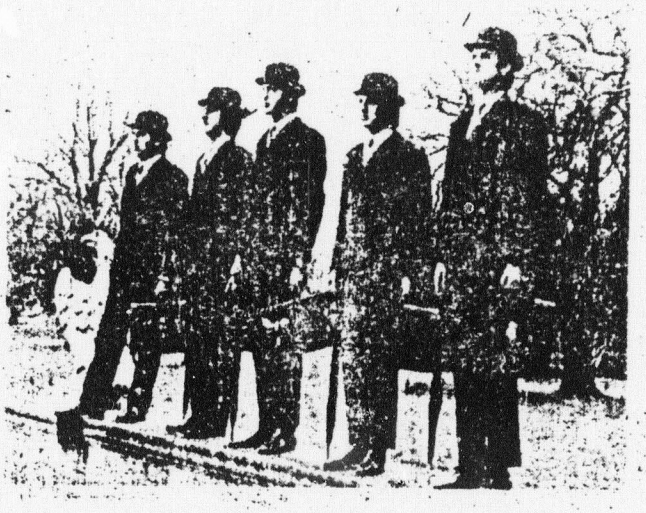
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Television needs more well-written, well-performed prime time comedy. CBS and Norman Lear are probably working to develop a tame formula situation comedy version of Monty Python's Flying Circus starring an Eskimo family (the last minority to be exploited for laughs); it will fail and CBS will wonder why.

Imitating and diluting quality products are not the same as creating them. But, networks argue, if we put a good show on nobody will watch it. They have statistics to prove they are correct. If, however, they would put enough good comedy shows on and stand behind them, sooner or later there would be nothing else on the screen and viewers will have no choice but to watch them. They will then prove to the networks that originality is an idea whose time has returned. And at last we shall be able to enjoy a good laugh.



MONTY PYTHON'S Flying Circus: Norman Lear is probably working on a tame version of it starring an Eskimo family.

Exhibit 4, Article Syracuse New Times, Annexed to Foregoing Affidavit.

Captain Video

by Roland Sweet

Critics are calling the new television season mediocre. They are wrong. The adjective they want is "bad."

Television comedy is especially dismal this year. It is a cliche to blame the times for everything that is wrong; nevertheless, they are a major reason why television comedy shows are no longer funny.

The Sixties were fun and funny. Remember? Shows like **That Was the Week That Was, The Smothers Brothers Comedy Hour** and **Laugh-In** reflected the good times as well as the heightened awareness that the world was a joke. Then came inflation, contrived and real shortages, political scandal and a lackluster President. Now, when people could use a good laugh to alleviate their depression, television comedy series are dispensing placebos instead of being a panacea. Too much of today's uninspirational, sugar-coated comedy is based in the very reality people want to escape. So people are getting their escapism from video violence.

Phyllis and **Rhoda** are dull, but harmless; **Joe Forrester**, however, is exciting, but potentially more dangerous than Nazi war criminal Adolf Eichmann.

Television comedy fails because it produces mindless shows that inspire thoughtless laughter. The 19th-Century English novelist George Meredith noted a general paucity of good comedies, but in "An Essay on Comedy," he called the flourishing of the comic idea an excellent test of a country's civilization. "The test of true comedy," he wrote, "is that it shall awaken thoughtful laughter."

The American sense of humor is being eroded by television comedy which is debasing a once-high standard with endless bad jokes ineptly executed by mundane characters in unimaginative situation and domestic comedies. They create the impression that everything is funny, when in fact nothing is.

Viewers have become their own laughtrack. Producers used to use canned laughter to reassure--or was it to persuade?--viewers they were watching a funny program. The technique was offensive yet effective--so effective that people tuning in **My World and Welcome to It** weren't certain the show was funny because it had no laugh track. After years of subliminal prompting, viewers today are conditioned to laugh indiscriminately. No longer able to discern what is really funny, they laugh at everything.

Exhibit 4, Article Syracuse New Times, Annexed to Foregoing Affidavit.





TWO OF THE BETTER comedies on TV this season are 'M*A*S*H' and 'The Carol Burnett Show': Americans are defiantly anti-intellectual and television doesn't want to be accused of contradicting that stereotype.

"This show was filmed (or taped) before a ive audience" is an empty reassurance. Live eople tube-fed on laughtracks and sitting in a tudio audience are eager to please. Too ager. Instead of laughing only when the roducer hopes, they laugh incessantly. For he most part, **All in the Family** is the udience laughing and the actors waiting for he laughter to stop so they can deliver their ext banal line, which is bound to bring more hindless guffaws.

The effect is cumulative. Realizing audiences will chuckle at claptrap, bad writers azily turn out poor scripts. Nobody worries bout quality so long as a series is successful. Why should the producers of Maude pay or good, funny scripts when most Monday ight viewers are already watching the show? Well, for one thing, if you treat people as atatonics long enough, they become catatonics.

The quality of comedy scripts is a major art of the problem. Instead of drawing on utside sources for their ideas, writers are eeding on other television shows.

Early television writers had no shows to all back on; instead, they relied on their xperience writing books, films or their own omedy acts.

They were creative, intelligent, educated or experienced), literate and diversified eople who interpreted the challenge of riting for television as being essentially he task of adapting the classic form of estern comedy--which stretches back to hakespeare and Aristophanes--to the new nedium. Except for **M*A*S*H**, **When Things Were Rotten**, **The Carol Burnett Show** and **Monty Python's Flying Circus**, today's television comedy is created stale. It is formula television that a chimpanzee could bang out on a typewriter.

This is not a nostalgic indictment. There have been some horrible television comedies; for example, **Mister Ed**, **The Jerry Lewis Show**, **Love American Style**, **My Mother the Car**, **The Secret Life of Henry Phyfe**, **Bewitched**, **Family Affair** and the ultimate ignominy, **Gilligan's Island**. However, there were always brighter choices. Many of these have retained their popularity in syndicated reruns. In fact, as shows each year get worse, viewers who have been able to hold on to some of their intelligence are tuning in such shows as **The Honeymooners**, **Burns and Allen** and the classic **I Love Lucy**.

Shows like **All in the Family** and **The Mary Tyler Moore Show** masquerade as sophisticated and intelligent comedies; however, neither approaches the brilliance and imaginativeness of **My World and Welcome to It**--which was canceled because it was sophisticated and intelligent. Another brilliant comedy series, **He and She**, was discarded because it was considered over the heads of most viewers. Neither show, it should be noted, ever had to resort to the topic of sex to conceal weak scripts because the scripts were never weak.

If television networks fear being labelled as liberal, then they fear being called disseminators of intelligence even more. Americans are defiantly anti-intellectual, and television does not want to be accused of contradicting that stereotype. It is the true mass medium.

Since it is primarily a sales vehicle, it needs to reach the broadest base. To sell its products, therefore, it encourages shows that aim for the lowest common denominator. Unwilling to elevate tastes, it caters to imbeciles with low attention spans and drags everyone else down to that level.

Most of the writers television employs are "safe." They do not understand comedy or people, but they do understand television and what powers it.

Dick Cavett, discussing the difficulty of writing good comedy in **Cavett**, observed: "People will think an old comedian is crazy when he tells a young writer to change a line from 'There are twelve chickens on the lawn' to 'There are fifteen chickens on the lawn,' but he's right. Because of the rhythm, fifteen is a funny number and twelve is not." It is a subtle point, but one of many overlooked by writers trained to think in terms of success rather than quality. Writers of **Laugh-In** and the Smothers Brothers' show were young, but they comprehended comedy better than they understood television. For this reason, their shows were good, entertaining, funny and not aimed downward for mass consumption. And they succeeded.

Thankfully, success does not depend solely on uncreative writing and unexciting network programming. A few good, imaginative and funny shows sneak through each year. They are not encouraged, however, and the networks are not committed to them beyond the obvious fact that people are watching them.

Commercial television's most obvious recent failure is the absence of **Monty Python's Flying Circus**. It is a 30-minute program, exclusive of commercials. Only one commercial station in the United States shows the program because commercial television cannot adapt to a program which is good but

--continued on page 27

Exhibit 4, Article Syracuse New Times, Annexed to Foregoing Affidavit.

SYRACUSE NEW TIMES, OCTOBER 26, 1975

--NOT LAUGHING

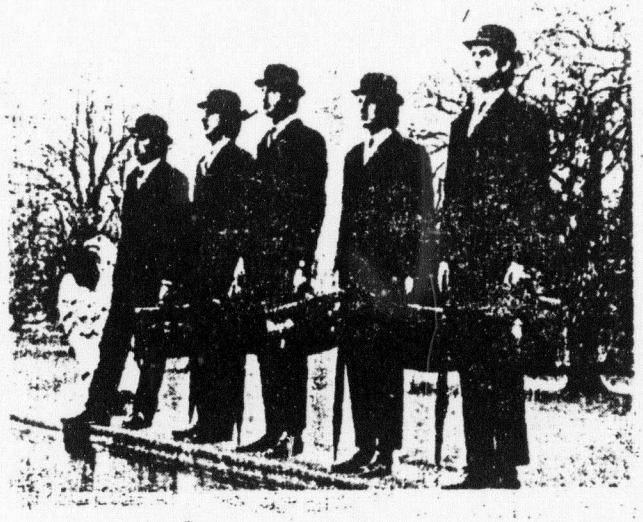
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MONTY PYTHON'S Flying Circus: Norman Lear is probably working on a tame version of it starring an Eskimo family.

--FILM RAP

continued from page 23

their marriage in order to salvage their relationship. Originally presented on Swedish television, which accounts for all the close-ups. Gifford; 7:05, 9:35 and 12:05.

Nov. 15: **So Dear to My Heart** (1948). Magnificent, though rarely seen, Disney story about a farmboy and his beloved pet lamb. The blend of animation and real-life sequences is similar in style to **Song of the South**, only better. They never show it on TV, so catch it now. Everson; 1 p.m.

Nov. 15: **The Great Dictator** (1940). As the world sat back in fear and frustration over Hitler's conquests, one person struck out against fascism in the international language of the cinema. The man was Charlie Chaplin, and this is his plea. Best scene: Chaplin bouncing and then bursting a balloon likeness of the world. Gifford; 7:30 and 9:30.

Nov. 16: Jezebel (1938). When Warner Brothers refused to loan Bette Davis out to play Scarlett in Gone with the Wind, she made such a fuss they had to produce this film in order to appease her. True to form, she won an Oscar. Kittredge; 7:05 and 9:05.

Nov. 17 and 18: **The Scarlett Pimpernel** (1936). Leslie Howard, quite dashing as a latter day Robin Hood, rescues Merle Oberon from assorted baddies. Deny'Os; 8.

Nov. 21: **Woodstock** (1970). When it first appeared, Michael Wadleigh's three-hour rock documentary was hailed as the beginning of a new wave of moviemaking. Five years later, it's a charming antique, a recollection of the long gone era of peace symbols and flower children. Grant; 7 and 10.

Nov. 21: **They Drive By Night** (1940). Humphrey Bogart and George Raft as a pair of truckdriving brothers, in a Warners' melodrama that changes directions about 20 times, steering an uneven course between social commentary and comedy. Some great performances and lots of atmosphere make it worthwhile. Kittredge: 7:05 and 9:05.

Nov. 21: **Dead End** (1937). Tough guy Humphrey Bogart meets his match in the toughest bunch of teenagers ever to hit the screen. Their success inspired a whole slew of sequels, but this is the one that gave these kids their best roles--as well as their name. Everson;8.

Nov. 21: **Harry and Tonto** (1974). Art Carney's Academy Award winning portrayal of an old timer with an unbridled love of people and places dominates this slow moving, whimsical yarn by Paul Mazursky. Gifford: 6:05, 8:05, 10:05 and 12:05.

Nov. 22: **L'Amour Fou** (1968). Jacques Rivette's long (almost 4 1/2 hours) study of a collapsing marriage. Gifford; 7:30.

"Frankly, Scarlett, I don't give a damn," Clark Gable said it and audiences --not to mention Vivien Leigh--swooned. Ranks along with **King Kong, Casablanca, Red River** and **A Night at the Opera** as one of the five greatest Hollywood films of all time. Gifford; 6:05, and 10:05.

Nov. 24-26: **Adventures of Sherlock Holmes** (1939). "Elementary, my dear Watson, elementary!" Basil Rathbone and Nigel Bruce literally become Mr. Holmes and Dr. Watson in one of the best (the other is **Hound of the Baskervilles**) entries in the original MGM series. Co-feature: Buster Keaton in **Sherlock Jr.** Gifford; 7 and 9:30.

Nov. 28: **The Roaring Twenties** (1939). Under Raoul Walsh's guidance, this film works on two levels: as a top-notch crime drama featuring James Cagney and Humphrey Bogart, and as a documentary style study of the social and economic forces that shaped an era of American history. Everson; 8.

Dec. 2-4: **Hearts and Minds** (1975). One of this year's finest films; a stunning documentary that criticizes our involvement in Vietnam--and comes up with some frightening reasons why. Gifford; 6, 8 and 10.

Dec. 5: **The Cocoanuts** (1929). Groucho, Harpo, Chico and Zeppo in their very first film. A bit stagebound (they, and it, were straight from Broadway) but the dialog is brilliantly absurdist, and oh! that Margaret Dumont. Also: **The Pharmacist**, with W.C. Fields. Grant; 6, 8 and 10.

Dec. 5: **Topper** (1937). Classy, charming comedy about an impressionable young man (Roland Young) who lets a pair of lovable ghosts (Constance Bennett and Cary Grant)

Affidavit of Robert C. Osterberg, Submitted in Support of Plaintiffs' Application for a Preliminary Injunction Pursuant to Rule 65 F.R.C.P.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ROBERT C. OSTERBERG, being duly sworn, deposes and says:

1. I am a partner in the law firm of Abeles Clark and Osterberg, attorneys for plaintiffs herein. This affidavit is submitted in support of plaintiffs' application for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. On December 12, 1975, I sent to defendant, at its New York City office, a telegraphic demand that defendant not broadcast any television episodes of plaintiffs' Monty Python material, unless such material is broadcast in its original, uncut form. In addition, I telephoned the offices of defendant that day and discussed plaintiffs' claims set forth in the complaint herein with Richard Burns, Esq., a member of defendant's legal department, and with Johnna Levine, a member of defendant's business affairs department. Said representatives of defendant confirmed to me that defendant has scheduled for nationwide television broadcast on December 26, 1975, three 30-minute television episodes of plaintiffs' Monty Python material cut from the total playing time of 90 minutes to approximately 75 minutes; that all such cuts were made without any attempt to obtain the approval of, or otherwise confer with, plaintiffs; that defendant insists it has the absolute right to delete Monty Python material from the scheduled

broadcast; that defendant insists it has the sole right to determine what portions of the Monty Python material it will utilize in its scheduled nationwide television broadcast; and that defendant has no agreement with any of plaintiffs for the use of said material, but claims whatever rights it acquired were through mesne assignments from The British Broadcasting Corporation, plaintiffs' licensee.

3. Annexed hereto, made part hereof and marked Exhibits 1 and 2 respectively, are copies of the scriptwriter's agreements between plaintiffs and The British Broadcasting Corporation dated June 14, 1974. Based upon information supplied to me by plaintiffs' representatives, I believe that said agreements comprehend the three 30-minute episodes scheduled for nationwide television broadcast by defendant on December 26, 1975. Upon information and belief, no agreements were made between plaintiffs and The British Broadcasting Corporation, or any other parties, which grant a right to alter the scripts of plaintiffs for television purposes beyond the strictly limited right specified in paragraph V of said agreements. As more fully appears from Exhibits 1 and 2, said paragraph V limits the right to make alterations to the exercise of the personal judgment of The British Broadcasting Corporation, which must occur prior to its use of the material. All of the material scheduled for nationwide television broadcast by defendant previously has been accepted and broadcast in uncut form by The British Broadcasting Corporation. Accordingly, the provisions of said agreements expressly preclude the making of cuts in the material by defendant for broadcast purposes, for any reason whatsoever.

WHEREFORE, it is respectfully submitted that plaintiffs' motion should be granted in all respects.

(Sworn to by Robert C. Osterberg, December 15, 1975.)

Exhibit 1, Agreement, Annexed to Foregoing Affidavit.

Terry Gilliam—see letter dated 19 August, 1974 from Jill Foster to David Gower

THE BRITISH BROADCASTING CORPORATION
BROADCASTING HOUSE, LONDON, WIA IAA

Telegrams: Broadcasts London Telex ★ Cables: Broadcasts London, PS4 ★ Telex 22182 ★ Telephones: 550 4163

AGREEMENT RELATING TO THE COMMISSIONING OF SPECIALLY WRITTEN TELEVISION SERIES AND SERIALS

Form Guild Series C

Name of Writer (Terry Gilliam) Graham Chapman, Terry Jones & Michael Palin (c/o Fras[illegible] & Dunlop)

I. IN CONSIDERATION of payment by the BBC to the Writer or his agent of a fee of £1140 per script (joint fee) to cover their interests (payable as provided in II below) the Writer hereby grants to the BBC the following rights in the 6 x 30-minute scripts for the series PYTHON PLAYHOUSES (working title) written in collaboration with Eric Idle. Project nos: 1154/2451-6. First three scripts for delivery by 1st August 1974, (hereinafter called "the work"):—remaining three scripts for delivery by 15th August 1974.

(1) The exclusive right to televise, during a period of 2 years from the date of delivery to the BBC of the full script (or of the last of the Writer's full scripts in any batch of not more than 13 programmes), a performance of the work once only, simultaneously or non-simultaneously, live and/or recorded, from all or

any of the BBC's transmitters in BBC-1 (including BBC Wales) or alternatively in BBC-2 as the case may be.

(2) The exclusive right to televise REPEAT PERFORMANCES of the work during a period of 2 years from the date of the initial BBC performance of the script (or of the last of the scripts commissioned from the Writer in any batch of not more than 13 programmes), subject to payment on broadcasting taking place of 50% of the initial BBC fee for each repeat given simultaneously or non-simultaneously, live and/or recorded, from all or any of the BBC's transmitters in BBC-1 (including BBC Wales) or alternatively in BBC-2 as the case may be.

(3) During a period of 18 months from the initial BBC broadcast of the last of the scripts commissioned from the Writer in any batch of not more than 13 programmes, THE EXCLUSIVE RIGHT TO ACQUIRE AN OPTION TO PURCHASE THE EXCLUSIVE RIGHT TO TRANSMIT OR TO LICENCE THE TRANSMISSION OF RECORDINGS OF THE WORK IN ANY OVERSEAS TERRITORY during a period of 7 years from the date of the initial BBC broadcast subject to payment, if such option to purchase is acquired by the BBC, of (a) non-returnable area payments in the form of percentages of the Writer's initial fee to be made within such 18 months (or such longer period as may be agreed upon with the Writer or his agent), and (b) percentages of the BBC's gross receipts from the sale abroad of its tele-

recordings of the work, payable after sales have been achieved, as set out below:—

Territory	*Area Payment (% of initial fee)*	*% of Gross Receipts*
U.S.A.	Nil	10%
Canada	15%	4%
Australia	15%	4%
Germany	30%	5%
Rest of Europe	20%	5%
Alternative for individual areas in Rest of Europe:		
Italy	5%	5%
East Europe (including Yugoslavia, Albania and Greece)	5%	5%
Belgium, Holland and Luxembourg	10%	5%
Scandinavia	15%	5%
France and Monaco	5%	5%
Spain and Portugal	5%	5%
Irish Republic	2%	5%
Rest of World	Nil	5%

PROVIDED THAT (a) the area payment in the case of Canada or Australia shall not be less than £100 for 50 to 60 minutes, or pro rata for shorter lengths, AND (b) in the case of complete and regular multiple part series and serials where all the episodes are written by

the same author or joint authors and in which the copyright is owned entirely by such author or joint authors (or, if the complete and original multiple part series or serial exceeds six episodes, where the same author or joint authors have written at least six episodes), then the author or joint authors may if he or they so wish, at the time when his or their agreement is made with theBBC but not subsequently, withhold rights for Europe, but not for other areas, AND (c) in the case of co-productions the gross receipts shall be taken to be the average mean rate listed in the latest available figure in "Variety" but adjusted in respect of lapse of time after consultation with the Guild, or in the case of countries not listed by "Variety" the average mean rate for the country in question to be agreed upon between the BBC and the Guild.

(4) The BBC shall be free without further payment to use recordings of the work for:—

(a) Private purposes of the BBC or for the purposes covered by this Agreement.

(b) Televising brief excerpts in programmes of a historic or reminiscent nature or in trailer programmes.

(c) Deposit, if the recording is considered of permanent interest, with the National Film Archive (being part of the British Film Institute) for preservation purposes and for private study on the Archive's premises by bona fide students.

(d) Showing at television and film festivals.

Exhibit 1, Agreement, Annexed to Foregoing Affidavit.

II. Payment of the fee referred to in I. above shall be made as follows:—

(1) Where a single script is commissioned by the BBC from the Writer, the fee is payable half on signature of this Agreement and half on acceptance by the BBC of the material as suitable for television.

(2) Where more than one script is simultaneously commissioned by the BBC from the Writer, the full fee for the first script is payable on signature of this Agreement, and the first half fees for the remaining scripts (up to a maximum of a further 12) are payable on acceptance by the BBC of the first full script. The second half fees (after No. 1) will become payable as each script is accepted.

(3) During a period of 56 days from delivery of the script (or, if more than one script is simultaneously commissioned, from delivery of the last of such scripts) the Writer shall carry out such rewrites as the BBC may ask for, but if the BBC requires further alterations after 56 days from delivery of the script (or, if more than one script is simultaneously commissioned, from delivery of the last of such scripts), then the Writer shall be entitled to ask for payment of a further quarter fee before undertaking such further alterations. If these alterations do not make the script acceptable to the BBC for broadcasting, then (unless special arrangements to the contrary are mutually agreed) the Agreement with the Writer shall be terminated, the final quarter

fee will not be payable, and the rights in the Writer's contribution will revert to him.

III. The Writer shall retain all rights in his script (subject to the terms of this Agreement) and in any characters (major or minor) dimensionally created by him for the series or serial. If any such dimensionally created character is subsequently used by the BBC in a major capacity in another programme not written by the original Writer, then the BBC shall be obliged to obtain the original Writer's prior consent and to negotiate a fee for such further use.

IV. The BBC will use its best endeavours to state within a month from delivery of a single script (or a month from delivery of the last of the commissioned scripts when two or more are commissioned simultaneously) whether a script is acceptable, or whether it requires any alterations to be undertaken by the Writer to make it acceptable for production, or whether it must abandon the script altogether (in which case all rights therein shall revert to the Writer and no further payments shall be due from the BBC).

V. When script alterations are necessary it is the intention of the BBC to make every effort to inform and to reach agreement with the Writer. Whenever practicable any necessary alterations (other than minor alterations) shall be made by the Writer. Nevertheless the BBC shall at all times have the right to make (a) minor alterations and (b) such other alterations as in its opinion are necessary in order to avoid involving the BBC in legal action or bringing the BBC into disrepute. Any decision under (b) shall be made at a level not below that of Head

of Department. It is however agreed that after a script has been accepted by the BBC alterations will not be made by the BBC under (b) above unless (i) the Writer, if available when the BBC requires the alterations to be made, has been asked to agree to them but is not willing to do so and (ii) the Writer has had, if he so requests and if the BBC agrees that time permits if rehearsals and recording are to proceed as planned, an opportunity to be represented by the Writers' Guild of Great Britain (or if he is not a member of the Guild by his agent) at a meeting with the BBC to be held within at most 48 hours of the request (excluding weekends). If in such circumstances there is no agreement about the alterations then the final decision shall rest with the BBC. Apart from the right to make alterations under (a) and (b) above the BBC shall not without the consent of the Writer or his agent (which consent shall not be unreasonably withheld) make any structural alterations as opposed to minor alterations to the script, provided that such consent shall not be necessary in any case where the Writer is for any reason not immediately available for consultation at the time which in the BBC's opinion is the deadline from the production point of view for such alterations to be made if rehearsals and recording are to proceed as planned.

VI. The Writer hereby WARRANTS that he will not license or sell the work for use on television in any country during the period between signature of this agreement and 8 months after the date of the initial BBC performance of the last of the scripts commissioned from the Writer in any batch of not more than 13 programmes, or, if the BBC exercises rights under

Exhibit 1, Agreement, Annexed to Foregoing Affidavit.

I(3) above, in any of the countries in question, until the expiration of such rights, and he further warrants that the work shall be an original work which does not infringe the copyright or any other right of any other person and further that it contains no defamatory matter (provided however that the Writer shall not be liable for any defamatory matter which in the opinion of the BBC was included in the script without negligence or notice on his part).

VII. The above terms accord with those of the BBC/Writers' Guild of Great Britain current Agreement for Series and Serials, and the provisions of that Agreement relating to Definitions (clause 3), Merchandising Rights (clause 6(b)), Credits (clause 7), Minimum Fees (clause 9), Reversion of Rights (clause 30(e)), Arbitration (clause 14) and Conciliation (clause 15) shall apply to this Agreement.

Signed on behalf of the BBC by D. Gower

Date 11-6-74

Signed by or on behalf of the Writer (Illegible)
Date 20th June, 1974

Exhibit 2, Agreement, Annexed to Foregoing Affidavit.

THE BRITISH BROADCASTING CORPORATION

Broadcasting House, London, W1A 1AA

Telegrams: Broadcasts London Telex ★ Cables: Broadcasts London, PS4 ★ Telex 22182 ★ Telephone: 550 4163

AGREEMENT RELATING TO THE COMMISSIONING OF SPECIALLY WRITTEN TELEVISION SERIES AND SERIALS

Form Guild Series C

Name of Wri[illegible]eric Idle (c/o Roger Hancock Ltd.)

I. In Consideration of payment by the BBC to the Writer or his agent of a fee of £285 per script (to cover his interest) (payable as provided in II below) the Writer hereby grants to the BBC the following rights in the 6 x 30-minute scripts for the series Python Playhouses (working title) written in collaboration with Graham Chapman, Terry Gilliam, Terry Jones & Michael Palin. Project nos: 1154/2451-6. First three scripts for delivery by 1st August 1974, remaining three scripts for delivery by 15th August 1974 (hereinafter called "the work"):—

(1) The exclusive right to televise, during a period of 2 years from the date of delivery to the BBC of the full script (or of the last of the Writer's full scripts in any batch of not more than 13 programmes), a performance of the work once only, simultaneously or non-simultaneously, live and/or recorded, from all or any of the BBC's transmitters in BBC-1 (in-

cluding BBC Wales) or alternatively in BBC-2 as the case may be.

(2) The exclusive right to televise REPEAT PERFORMANCES of the work during a period of 2 years from the date of the initial BBC performance of the script (or of the last of the scripts commissioned from the Writer in any batch of not more than 13 programmes), subject to payment on broadcasting taking place of 50% of the initial BBC fee for each repeat given simultaneously or non-simultaneously, live and/or recorded, from all or any of the BBC's transmitters in BBC-1 (including BBC Wales) or alternatively in BBC-2 as the case may be.

(3) During a period of 18 months from the initial BBC broadcast of the last of the scripts commissioned from the Writer in any batch of not more than 13 programmes, THE EXCLUSIVE RIGHT TO ACQUIRE AN OPTION TO PURCHASE THE EXCLUSIVE RIGHT TO TRANSMIT OR TO LICENCE THE TRANSMISSION OF RECORDINGS OF THE WORK IN ANY OVERSEAS TERRITORY during a period of 7 years from the date of the initial BBC broadcast subject to payment, if such option to purchase is acquired by the BBC, of (a) non-returnable area payments in the form of percentages of the Writer's initial fee to be made within such 18 months (or such longer period as may be agreed upon with the Writer or his agent), and (b) percentages of the BBC's gross receipts from the sale abroad of its telerecordings of the work, payable after sales

Exhibit 2, Agreement, Annexed to Foregoing Affidavit.

have been achieved, as set out below:—

Territory	*Area Payment (% of initial fee)*	*% of Gross Receipts*
U.S.A.	Nil	10%
Canada	15%	4%
Australia	15%	4%
Germany	30%	5%
Rest of Europe	20%	5%
Alternative for individual areas in Rest of Europe:		
Italy	5%	5%
East Europe (including Yugoslavia, Albania and Greece)	5%	5%
Belgium, Holland and Luxembourg	10%	5%
Scandinavia	15%	5%
France and Monaco	5%	5%
Spain and Portugal	5%	5%
Irish Republic	2%	5%
Rest of World	Nil	5%

PROVIDED THAT (a) the area payment in the case of Canada or Australia shall not be less than £100 for 50 to 60 minutes, or pro rata for shorter lengths, AND (b) in the case of complete and regular multiple part series and serials where all the episodes are written by the same author or joint author, and in which

the copyright is owned entirely by such author or joint authors (or, if the complete and original multiple part series or serial exceeds six episodes, where the same author or joint authors have written at least six episodes), then the author or joint authors may if he or they so wish, at the time when his or their agreement is made with the BBC but not subsequently, withhold rights for Europe, but not for other areas, AND (c) in the case of co-productions the gross receipts shall be taken to be the average mean rate listed in the latest available figure in "Variety" but adjusted in respect of lapse of time after consultation with the Guild, or in the case of countries not listed by "Variety" the average mean rate for the country in question to be agreed upon between the BBC and the Guild.

(4) The BBC shall be free without further payment to use recordings of the work for:—

(a) Private purposes of the BBC or for the purposes covered by this Agreement.

(b) Televising brief excerpts in programmes of a historic or reminiscent nature or in trailer programmes.

(c) Deposit, if the recording is considered of permanent interest, with the National Film Archive (being part of the British Film Institute) for preservation purposes and for private study on the Archive's premises by bona fide students.

(d) Showing at television and film festivals.

Exhibit 2, Agreement, Annexed to Foregoing Affidavit.

II. Payment of the fee referred to in I. above shall be made as follows:—

(1) Where a single script is commissioned by the BBC from the Writer, the fee is payable half on signature of this Agreement and half on acceptance by the BBC of the material as suitable for television.

(2) Where more than one script is simultaneously commissioned by the BBC from the Writer, the full fee for the first script is payable on signature of this Agreement, and the first half fees for the remaining scripts (up to a maximum of a further 12) are payable on acceptance by the BBC of the first full script. The second half fees (after No. 1) will become payable as each script is accepted.

(3) During a period of 56 days from delivery of the script (or, if more than one script is simultaneously commissioned, from delivery of the last of such scripts) the Writer shall carry out such rewrites as the BBC may ask for, but if the BBC requires further alterations after 56 days from delivery of the script (or, if more than one script is simultaneously commissioned, from delivery of the last of such scripts), then the Writer shall be entitled to ask for payment of a further quarter fee before undertaking such further alterations. If these alterations do not make the script acceptable to the BBC for broadcasting, then (unless special arrangements to the contrary are mutually agreed) the Agreement with the Writer shall be terminated, the final quarter

fee will not be payable, and the rights in the Writer's contribution will revert to him.

III. The Writer shall retain all rights in his script (subject to the terms of this Agreement) and in any characters (major or minor) dimensionally created by him for the series or serial. If any such dimensionally created character is subsequently used by the BBC in a major capacity in another programme not written by the original Writer, then the BBC shall be obliged to obtain the original Writer's prior consent and to negotiate a fee for such further use.

IV. The BBC will use its best endeavours to state within a month from delivery of a single script (or a month from delivery of the last of the commissioned scripts when two or more are commissioned simultaneously) whether a script is acceptable, or whether it requires any alterations to be undertaken by the Writer to make it acceptable for production, or whether it must abandon the script altogether (in which case all rights therein shall revert to the Writer and no further payments shall be due from the BBC).

V. When script alterations are necessary it is the intention of the BBC to make every effort to inform and to reach agreement with the Writer. Whenever practicable any necessary alterations (other than minor alterations) shall be made by the Writer. Nevertheless the BBC shall at all times have the right to make (a) minor alterations and (b) such other alterations as in its opinion are necessary in order to avoid involving the BBC in legal action or bringing the BBC into disrepute. Any decision under (b) shall be made at a level not below that of Head

of Department. It is however agreed that after a script has been accepted by the BBC alterations will not be made by the BBC under (b) above unless (i) the Writer, if available when the BBC requires the alterations to be made, has been asked to agree to them but is not willing to do so and (ii) the Writer has had, if he so requests and if the BBC agrees that time permits if rehearsals and recording are to proceed as planned, an opportunity to be represented by the Writers' Guild of Great Britain (or if he is not a member of the Guild by his agent) at a meeting with the BBC to be held within at most 48 hours of the request (excluding weekends). If in such circumstances there is no agreement about the alterations then the final decision shall rest with the BBC. Apart from the right to make alterations under (a) and (b) above the BBC shall not without the consent of the Writer or his agent (which consent shall not be unreasonably withheld) make any structural alterations as opposed to minor alterations to the script, provided that such consent shall not be necessary in any case where the Writer is for any reason not immediately available for consultation at the time which in the BBC's opinion is the deadline from the production point of view for such alterations to be made if rehearsals and recording are to proceed as planned.

VI. The Writer hereby WARRANTS that he will not license or sell the work for use on television in any country during the period between signature of this agreement and 8 months after the date of the initial BBC performance of the last of the scripts commissioned from the Writer in any batch of not more than 13 programmes, or, if the BBC exercises rights under

Exhibit 2, Agreement, Annexed to Foregoing Affidavit.

I(3) above, in any of the countries in question, until the expiration of such rights, and he further warrants that the work shall be an original work which does not infringe the copyright or any other right of any other person and further that it contains no defamatory matter (provided however that the Writer shall not be liable for any defamatory matter which in the opinion of the BBC was included in the script without negligence or malice on his part).

VII. The above terms accord with those of the BBC/Writers' Guild of Great Britain current Agreement for Series and Serials, and the provisions of that Agreement relating to Definitions (clause 3), Merchandising Rights (clause 6(b)), Credits (clause 7), Minimum Fees (clause 9), Reversion of Rights (clause 10(e)), Arbitration (clause 14) and Conciliation (clause 15) shall apply to this Agreement.

Signed on behalf of the BBC by D. GOWER

Date 11-6-74

Signed by or on behalf of the Writer (Illegible)
Date (illegible)

Affidavit of Richard N. Burns, in Opposition to Plaintiffs' Application for Preliminary Injunction.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

RICHARD N. BURNS, being duly sworn, deposes and says:

1. I am a Vice President of the American Broadcasting Company, a division of the defendant, American Broadcasting Companies, Inc. ("ABC").

2. This affidavit is made in opposition to the motion of the plaintiffs for a preliminary injunction.

3. The order to show cause with supporting papers and the summons and complaint were served upon the defendant last night, December 15, 1975, at 5:30 p.m. and is returnable today at 4:30 p.m. I have not had an opportunity until noontime today to discuss the matter with counsel for the purpose of opposing the motion and then only to cover the highlights because of the pressure of time.

4. In the first place it should be borne in mind that even though the plaintiffs in their moving papers admit that they entered into a written agreement with BBC, which in turn appointed Time-Life Films as its distributor in the United States, neither BBC nor Time-Life Films is a party to this action. For that reason alone the application should be denied.

Affidavit of Richard N. Burns, in Opposition to Plaintiffs' Application for Preliminary Injunction.

5. In the second place ABC has no knowledge or information as to the contractual arrangements between the plaintiffs and BBC and the contractual arrangements whereby Time-Life Films became the "distributor in the United States of BBC television productions". (Paragraph 5, affidavit of Nancy Lewis, verified Dec. 15, 1975)

6. ABC only had negotiations and entered into an agreement with Time-Life Films. Annexed hereto as Exhibit A is a 3-page agreement dated July 3, 1975 and is the only signed agreement with regard to ABC's broadcast of the Monty Python show. As can be seen from Exhibit A, paragraph 4 provides, 'The programs are to be edited to ABC's Wide World of Entertainment format." And, paragraph 6 provides that the "programs will be edited and otherwise made to fully conform to the policies of ABC's Department of Broadcast Standards and Practices."

7. ABC has spent a considerable amount of money and made commitments based upon the agreement expressed in the letter of July 3, 1975, annexed hereto as Exhibit A.

8. On the other hand, plaintiffs were certainly aware of the fact, as is evident from the letter dated August 1, 1975, that a deal was made with ABC for two 90-minute compilations (paragraph 5 of the complaint), and received all monetary benefits flowing to them as a consequence of said deal.

9. The statement on page 7 of the affidavit of Nancy Lewis that "We were assured by defendant that a copy of the proposed broadcast would be provided the group in London on or before December 2, 1975" is totally without foundation. No one at ABC is aware of any assurance and the affidavit does not specify how or by whom such assurance was given to the plaintiffs.

Affidavit of Richard N. Burns, in Opposition to Plaintiffs' Application for Preliminary Injunction.

10. Another statement contained in the moving affidavit of Robert C. Osterberg (page 2) that "no agreements were made between plaintiffs and the British Broadcasting Corporation, or any other parties, which grant a right to alter the scripts of plaintiffs for television purposes beyond the strictly limited rights specified in paragraph 5 of said agreements" is also inaccurate when viewed against Exhibit A annexed to this affidavit The BBC distributor did in fact permit the editing referred to in Exhibit A.

11. It is apparent from reading the complaint and the affidavit in support of the order to show cause for the injunction that plaintiffs are relying entirely upon their relationship and dealings with BBC and totally ignore the fact that the BBC was its agent and BBC selected Time-Life as its distributor.

12. The inescapable fact is that the plaintiffs put in motion the agreements and relationships which caused ABC to enter upon the program for broadcasting purposes. ABC as an innnocent party and acting in good faith in reliance upon its agreement with Time-Life is now placed in a position that it will suffer irreparable harm if a preliminary injunction is granted.

13. Plaintiffs on the other hand will suffer no irreparable harm and can be adequately compensated by money damages.

14. It is submitted that the equities in this case weigh heavily in favor of ABC and far outweigh any possible or imagined injury which plaintiffs think they suffered, because of the "substantially altered [the] artistic nature of three of the six episodes" caused by the deletions. (Paragraph 17 of the complaint) On the contrary, I have

been informed by ABC employees that the deletions did not substantially affect any of the scripts.

15. If the preliminary injunction is granted plaintiffs will have all the relief they could possibly obtain after trial.

16. The damages ABC will suffer if the broadcast is stayed will amount to at least $100,000.00, which includes expenses made and incurred by ABC commitments to sponsors, and all consequential losses.

WHEREFORE, deponent respectfully requests that the motion be denied in all respects.

(Sworn to by Richard N. Burns, December 16, 1975.)

Exhibit A, Agreement, Annexed to Foregoing Affidavit.

Letterhead of ABC Entertainment

July 3, 1975

Mr. Richard Barovick
Hardee, Barovick, Konecky & Braun
1 Dag Hammarskjold Plaza
New York, New York 10017

RE: MONTY PYTHON SHOW

Dear Mr. Barovick:

The following sets forth the basic terms of our understanding with regard to two Late Night programs featuring Monty Python Show to be furnished to ABC by Time-Life Films, Inc. for broadcast during the Late Night time period.

1. Time-Life Films, Inc. (Packager) will deliver to ABC, on or before September 1, 1975, two 90-minute, color, tape special programs. The programs are to be compiled and edited from six one-half hour Monty Python Show, previously screened for ABC, which have not been exhibited in the United States.

2. In the event that there is material in the six one-half hour Monty Python Show mentioned above sufficient to form another show, even if that additional show would be less than 90 minutes in lengthy, Packager will deliver such third program along with the two programs contracted for.

3. ABC will pay $65,000 each for the licenses entitling them to make two non-primetime plays of each program on or before April 30, 1977. There will be no additional charge for the license to broadcast the possible additional third program, if such program is delivered, except ABC will reimburse Packager for editing costs. Packager shall

supply Errors & Omissions Insurance with respect to each program delivered.

4. The programs are to be edited to ABC's Wide World of Entertainment format, and the main titles for each of the programs shall appear at the beginning of the program. ABC will pay up to $2,000 per program for editing costs incurred by Packager for the first two shows contracted for and actual costs on the "materials" for the third program.

5. Materials will be delivered in accordance with ABC's standard requirements on 525 tape. A copy of ABC's video materials schedule is attached hereto.

6. The programs will be edited and otherwise made to fully conform to the policies of ABC's Department of Broadcast Standards and Practices. (Packager will supply the necessary 508 Affidavits and any other Affidavits that may be required.) In the event that ABC's Department of Broadcast Standards and Practices does not approve and pass a quantity of material sufficient to constitute two 90-minute shows, Packager will deliver and ABC will accept, in lieu thereof, one 90-minute show.

7. For the term of the contract the programs will be exclusive to ABC in all media in the licensed territory of United States, its territories and possessions (including Puerto Rico), Tijuana, Mexico, Jamaica, Bermuda and the Bahamas. ABC shall, however, reimburse Packager if foreign residuals are triggered.

8. Subject to the aforesaid exclusivity, Packager owns the programs as compiled and edited and all subsidiary rights, provided, however:

A. Packager shall observe the Windsor, Ontario black-out during the period of ABC's telecast rights;

Exhibit A, Agreement, Annexed to Foregoing Affidavit.

B. As to all other Canadian areas—there shall be no pre-release prior to the date of ABC's first network broadcast of the program as compiled and edited.

9. ABC shall have an option, exercisable on or before January 1, 1976, to have Packager deliver five additional Monty Python Shows for late-night telecast after May 1, 1977. All the terms and conditions covering the original two programs shall be applicable to the five additional programs, except that the license fee for each such program shall be $75,000, plus editing charges of up to $2,000 per program, and the broadcast period shall be from May 1, 1977 through April 30, 1979. This group of five additional programs, as well as the group of eight additional programs which are covered by a second option, will be compiled from material in 39 half-hour Monty Python Flying Circus Shows previously shown on the [illegible] Broadcasting System.

10. ABC shall have a second option, exercisable on or before September 1, 1976, to have Packager deliver eight additional Monty Python Late Night shows for telecast after May 1, 1977. All the terms of this group of eight additional programs, except that the license fee for each such program shall be $8[illegible],000, plus editing charges of up to $2,000 per program, and the broadcast period shall be from May 1, 1977 through April 30, 1979.

A more formal contract will be sent to you shortly. In the meantime, will you please signify your assent to these terms by signing one copy of this memorandum and returning it to me.

Sincerely,

JOHNNA LEVINE

Agreed To:

TIME-LIFE FILMS, INC.

BY M. E. MAILLER

Extracts of Transcript.

* * * * *

MR. FRIED: I say you can not decide it, because BBC is not a party to this action. BBC does not --

THE COURT: There is no motion pending before me to dismiss this action because of lack of indispensible party, and if there were I believe I would deny it. I think that Judge Frankel ruled very conclusively on that point in a case of his that was referred to in the papers here by the plaintiffs. You are free, of course, and I suggested to you the last time we met to bring in both Time Life and I assume BBC as third party defendants here. It might be a very useful thing to do sooner or later.

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Q Do you have an opinion as to whether or not they will be damaged by the showing of the broadcast by ABC on the 26th in its present form?

A Yes.

* * * * *

THE WITNESS: The show we saw yesterday, which is the scheduled show, is just not representative of the name of Monty Python, it's not Python work. The core of the homor -- to use, I mean, the whole thing we worked for, Monty Python is a unique form of humor.

THE COURT: It sure is. I must admit that I have seen probably a half dozen programs on television and I have also seen the movie, whatever it's called --

THE WITNESS: Monty Python and the Holy Grail.

THE COURT: Yes.

THE WITNESS: The whole basis of Python and what I think makes them so unique is the fact that it's their work, it's created by six people, all the writing is done and performed by these same basic people. They have had full control over it. We have never wanted to compromise.

THE COURT: Miss Lewis, I understand that. Of course, everybody's work is unique, whether it's good, bad or indifferent. But the question is, in your opinion,

how are the changes which ABC has wrought -- how do they affect the work? I am not saying they don't. I just want to know how.

THE WITNESS: The way it affects it to me, I think the show -- it's not Python humor any more, it's removed. It's an entirely different element.

THE COURT: Sort of like Bob Hope is it now?

THE WITNESS: It's more like that. It's more of a run of a mill routine show that you might see on any network comedy. It's cut down to what they consider to be their standards that they wish to impose upon the public. This is not the way Python has been established in this country. When people turn in to watch a Monty Python show they are expecting one level of comedy and that is not what they see in that show. They have taken out words, they have changed the meanings of sketches completely. A lot of them don't make sense. It is just not a Monty Python product. We have had so many people -- obviously ABC is interested. The name has been seized with enormous exploitation across the country in nearly every major publication.

And so people are going to turn in now. ABC has a much wider audience --

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THE WITNESS: People who are turning in to see Monty Python, this is their first exposure, their first chance. They tune in, they are going to see a routine show, a comedy show that is not what Monty Python is all about. It's a total misrepresentation of the name.

THE COURT: Very good. I mean, thank you for answering straight.

Q One further question. You made reference to the fact that there is a difference between the ABC exposure and Public Broadcasting exposure.

Do you know how many cities public broadcasting stations reach with the Monty Python program?

A The exact number, the last number I believe it was 133. Somewhere between 120 and 130, somewhere in that range, to the best of my knowledge. That was the last information I had.

Q Does that cover the same areas that are covered on a nationwide broadcast by ABC?

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jhas Lewis - direct, cross 37

A It obviously does not cover as many territories by any means. I am sure ABC's network -- I don't know how many affiliations they have, but I am sure it's much wider than that. We cover the same areas of the country, but in much more selective terms.

THE COURT: They have a more extensive coverage, is that it?

THE WITNESS: Yes, I am sure. PBS stations are scattered. I mean, it was done station by station. So it's not a network.

Q Based upon your knowledge of the television industry, the ABC network broadcast reaches more people, the potential audience is much greater?

A Definitely, yes.

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jhas Lewis - cross 46

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Q What is your occupation, Mr. Palin?

A I am an actor and writer.

Q Are you associated with the Monty Python group?

A Yes.

Q In what capacity?

A As an actor and a writer.

Q Can you describe for us the process by which Monty Python group members write scripts for television programs?

THE COURT: Is it describable?

A I can give you rough guidelines, but, I mean, don't take me too literally.

Usually the scripts will be written by individuals or groups of say two or three within the five and then after maybe a weeks' work preparing scripts these will be submitted to a kind of meeting of the group as a whole.

The scripts will then be read out. Those that are rejected are thrown away and a rough list of good sketches that work is then assembled and maybe the group as a whole will then work on them or someone will go back and say "I would like to change it, I would like to work on someone else's material." So there is a lot of give and take. But eventually at a meeting of the group as a whole the script is assembled.

lhbr 1 Palin-direct

am2 Q Once you reach a final assemblage of the script, what do you do with it?

A Well, when the script is finally assembled, we submit it to BBC.

THE COURT: By finally assembled, you just don't mean pieces put together, I take it, but --

THE WITNESS: A script.

THE COURT: A whole which is satisfactory to your group?

THE WITNESS: That's right.

Q This is in typewritten form that you submit to the BBC?

A Yes.

Q Then does the BBC comment upon the script?

A Well, BBC doesn't have any system. Usuaully what happens, the script is typed up, submitted to BBC, they then make their copies and send one back to us. They may make a comment on the script at that point and we will then discuss it with them, but generally the scripts are just sent back, typed up by the BBC.

Q How does it get then from the script form into the final recorded form by which BBC broadcasts it?

A Well, then we rehearse -- first we do preliminary filming, which may take usually three or four

lhbr 2 Palin-direct

days per script, and when the film inserts are done, we then rehearse for a week per 30 minutes for the studio material.

At the end of that week, this is then performed in the studio and the filmed inserts are shown at the same time, and the script - the whole show is then put on tape, which is then edited, usually, to bring it down to the 30 minutes.

Q Who edits it?

A The editing is done by Ian Mc Naughton, who is the director of our shows.

THE COURT: Is he a BBC employee?

THE WITNESS: He is a free lance director who works under contract to the BBC.

THE COURT: Who pays him?

THE WITNESS: BBC pays him. The editing is always done in conjunction with at least one of us.

Q You mean you sit down and you look at it at the same time?

A Yes.

Q How physically is it done?

A We are in the video tape area with the Ampex machines where the actual editing and cutting is being done, and we are part to all that is actually done

in the editing.

Q When you film or record the programs, do you work from the printed script?

A Yes.

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Q I show you Plaintiffs' Exhibits 7, 8 and 9 for identification. Are you able to identify those documents?

A Yes.

Q What are they?

A They are these scripts which we wrote and submitted to BBC and were accepted by BBC of three episodes of Monty Python's Flying Circus.

THE COURT: Are they the three episodes that we are dealing with in this case?

MR. OSTERBERG: Yes.

THE WITNESS: Yes.

THE COURT: Are they?

THE WITNESS: Yes, they are.

Q Were those scripts used in making recordings forthe BBC of the programs?

A Yes.

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Q Were those scripts prepared pursuant to written agreements with the BBC?

A Yes.

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Q I show you Exhibits 1 and 2 annexed to the affidavit of Robert C. Osterberg submitted in support of his application for preliminary injunction and ask you if you can identify those copies of the agreements.

A Yes. That's a writing agreement with BBC.

Q You say writing agreement. Does that --

A It is an agreement to supply BBC with six 30-minute scripts.

Q That refers to the writing of the scripts that are now before you as Exhibits 7, 8 and 9?

A Yes.

Q Do you have any other agreements with BBC with respect to the writing of those scripts?

A No.

This is the sole agreement.

Q Have you had an opportunity to review the proposed program to be broadcast by ABC on the 26th of December?

A Yes, we reviewed it.

Q When did you have an opportunity to review that?

A Yesterday morning.

Q Where was that?

A At ABC television.

Q In what form was the program?

A The program that we saw, we saw the tapes with gaps left where the commercial breaks would be, so we didn't actually see the commercials, but it was on a cassette recorder that we saw it.

Q So it is understood that the gaps that were there were approximately the same length or you were told would be the same length as the commercial inserts?

A Yes. I wasn't absolutely clear whether it was the exact time of the commercial inserts, but we were certainly told this is where the commercials would be, yes.

Q Did you view the entire proposed program from beginning to end?

A Yes.

Q Were you able to determine in your mind how many minutes were deleted from the program of actual Python material?

A Yes. I mean, it seemed in the region of at least 20 minutes of Python material.

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Q I show you Plaintifs' Exhibit 10 in evidence. Do you recognize that document?

A Yes. That's the list of cuts made by ABC in the three shows for December 26th.

Q Who supplied that to you?

A ABC.

Q Is that an accurate listing of the cuts that are made in the proposed showing?

A No.

Q In what way is it not accurate?

A Well, there are certain omissions, there are parts of the programs which were cut which don't appear on this list, and also, I mean, I takeexception because I think there are inaccuracies in the way the script is described. I mean, inferences are put on particular parts of the script which we would not agree to.

Q Will you give us an example of what you are referring to?

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A An example of where it is just inaccurate is in the very first edit --

THE COURT: No. 1?

THE WITNESS: No. 1, the words "The Secret Loves for Bi-Sexuals." In fact, in the script, as it is, it is "The Secret Love for Algy the Bi-Sexual Navigator," which, you know, introduces another element. Just saying "The secret love for bi-sexuals," he is not what we said and I think alters our intention.

No. 31, "Sequence of discussion on how to end show. :12 seem removed of homosexual commentator discussing program."

ABC says he is a homosexual commentator and not us. Thisis inaccurate. He is not a homosexual

commentator.

* * * * * *

Q Did you view the entire proposed special that ABC has scheduled to broadcast on the 26th?

A Yes.

Q Do you have any objection to the changes in the

programs that were made by ABC?

A Yes.

Q What are those objections?

A Well, for a start, we object to any cuts from the show that we made for BBC. We were under the impression all along that if these programs were shown, they would not be cut within the 30 minutes. That's our basic objection as to any cuts.

THE COURT: Now that they have been cut, will you tell me what effect do you think the cut has had and why you object to it that way?

THE WITNESS: Well, I think that any cuts misrepresent us in our work and what we were trying to say and what we were trying to do and the effect that we were trying to achieve. It is words taken out, removal ofpassages, makes sketches seems to have no sense.

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Q Referring to the first portion of Exhibit 10-A before you, it says, First BBC Show Used - 'L.E. War.'" Can you give us some examples of what you are talking about from the listingof cuts to be made to that particular segment?

A Yes.

For a start, say, taking point 3, "In military

lhbr 13 Palin-direct

trial scene, cut at 1:40 starting approximately 2:27 into scene to delte entire reference to specal gaiters presented to soldier by regiment for 'sexually obliging them.'"

The words "sexually obliging them," by the way, were put in by ABC. They don't occur in the script. At any rate, it makes a nonsense of the sketch.

The sketch is briefly about a court martial in which a cousel is trying to cross examine a deserter. The judge keeps picking him up on the tiniest little points. Every time he is trying to get through to this deserter --

THE COURT: Are there still such judges?

THE WITNESS: Only in our fantasy minds, your Honor. The sketch is about the progressive irritation of the counsel. He is trying to put questions, perfectly ordinary questions, also in this very formal court setup, to this deserter.

He goes on, he talks about -- mentions a town Basingstokes, and the judge picks him upon Basingstokes. "Where is Basingstokes?"

He is getting really made.

So then at one point he says, "The deserter had in his possession at the time he deserted one Greenfield

rifle, one pair of special gaiters, one large tin."

He said, "What were the special gaiters?"

"They are just gaiters he was given."

Anyway, he goes back to the interrogation. The judge keeps coming in on these gaters, trying to establish why these gaiters were special.

He said, "Well, they were given as a token of thanks by the regiment."

"Yes, yes."

"Now, did you on this date -- and why were they given as a token of thanks?"

Well, they used to make him happy, and he tries to go on.

Again the judge comes in, "In which way did they try to make him happy?"

MR. FRIED: Your Honor, this is very amusing and interesting, but I think this is off the track. The only question is what the effect of that is.

THE COURT: Mr. Palin is trying to tell me what the original was like so he can tell me what the effect of the excisionwill be. Overruled. Go ahead. I am not sitting here just because I am amused, although I am amused.

THE WITNESS: At any rate, he keeps going on

and the counsel keeps trying to use euphemisms to reply to the judge's constant and persistent little irritating interferences, until at the end the counsel is driven to the point where he is saying, "They used to make him happy."

"How did they make him happy?"

"They used to make him content in little ways."

"What little ways?"

"Your Honor, I really think this is not for this court."

"No, I want to find out."

In the end he said, "He used to wound things up there," at which point the judge interrupts.

But the whole point, the validity of that sketch was that it gets to that point, that the court -- the whole court business absolutely breaks down and it has an absurd ending.

The sketch as ABC wanted to put it out would end before any of the gaitors bit is mentioned, and therefore we submit it makes it a very ordinary, bland, dull sketch, without any of the essence of python in it.

THE COURT: Right, I understand.

BY MR. OSTERBERG:

Q Can you give us another example from that particular --

lhbr 16 Palin-direct

A Yes, there is another long example in area 10.

"In same sequence 1:06 removed starting with 'Intercourse'" --

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A (Continuing) Item 10 in the cuts is a very major cut out of a sketch which worked very well which --the sketch just depicts a very English upper class trio, mother, father and unmarried daughter sitting in rather kind of heavily posed fashion with all their servants behind, just talking about words. It is about the sound of words, "Gah" and "caribou" and all these words, the father going on in a totally fantasy world, talking about these words, and then as the sketch develops he begins to say the words which have been cut out here: "Intercourse, pert thighs." He begins to arouse himself with sexual words. He doesn't actually move or say anything.

The sketch is about the arousal of this man by these words to the point where his wife gets up, finds a bucket of water and pours it over him. That stops him. That whole section about the sexual arousal was cut out, also was cut out the pouring of the water.

So there is this point in the sketch where he is

suddenly damp which we feel, youknow, is kind of bad for the sketch and makes us look like idiots.

Q Are there similar changes throughout the other two programs as well?

A Yes. I mean, there are changes which -- for instance, on page 2, point 14. "Scene of policeman and man sitting in wingback chairs on bridge over Thames. One cut of approximately :47 of woman being beaten up by policeman and policeman talking with man on bridge deleted essentially for timing purposes."

It may be deleted essentially for timing purposes, but in fact what they have done is remove the point of the character. In fact, this is about a policeman who has an obsession about how his helmet is designed and talks about the design of the helmet.

They have taken out the portion where he begins to talk about his helmet and they have taken that out but at the same time kept in one reference to it later on in the sketch which seems to make no sense.

The character doesn't make any sense, and that's just another instance where a cut which may have been made for timing purposes actually destroys the continuity of the sketch.

Q Do you believe that what is left in the program

lhbr 18 Palin-direct

by ABC is representative of Mony Python humor and what you ae trying to achieve with it?

A No, not at all.

Q Is that based upon the cuts, some of which you have mentioned, but the cuts in their entirety?

A The cuts in their entirety, yes.

Q Do you believe that you will be damaged as a result of the broadcast of this program by ABC?

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A I should imagine for a start, loss of professional reputation. People who see this -- I mean, our shows have been shown in their entirety in the states for about one and a half years. A lot of people know exactly what Python is, appreciate Python for various things which other shows aren't. It does have a rather straightforward, down-to-earth sometimes shocking, sometimes controversial approach, but, I mean, that's always been what our shows are like, and they have been seen as this.

I feel that what ABC are planning to do is

to just neuter the show to make them bland --

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A As a result of that I think people who know Monty Python will see the show and by disappointed. On the other hand, the people who haven't seen Monty Python will see the show, and I don't believe they are giving them what Monty Python is.

I feel, you know, , this show is weak, it is not going to help us, not going to help anything else we do in the states, not going to help films or books, or things like that, which we have always had control over and we have always maintained control in our films and books and the other, the PBS series.

Here they are seeing something which is really ABC's work, not our work, and I take objection to that.

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Q Have any of the Monty Python television programs been shown on commercial television other than ABC in its

prior telecasts?

A Yes, I believe two stations in Las Vegas and Houston have -- commercial stations, have shown the Monty Python show.

Q Do you know whether they cut the Monty Python show?

A No. We made it specifically clear we didn't want them cut, and they agreed with that. The commercial stations showed them in their entirety with commercials at either end.

Q Do you know of any television broadcasts of Monty Python television programs in the United States which have been cut other than the prior ABC one?

A No.

MR. OSTERBERG: I have no further questions.

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Q Do you perform in connection with the taping of the program, you personally?

A Yes.

Q Do you have a separate agreement for your performance?

A Yes.

Q Is that agreement here?

THE COURT: With BBC?

MR.FRIED: Yes.

THE COURT: What does it have to do with the issues before me?

MR. FRIED: Because that relates to what goes into the taped product, your Honor.

THE COURT: Mr. Fried, I simply disagree with you on this as a matter of law. You can press it elsewhere if I should decide against ABC. It does not seem to be an issue before me, what Mr. Palin's separate contract for acting is with BBC.

Q Are there any other agreements between your group and BBC regarding recording, mechanical rights and other rights in connection with taping a program from a script?

A We have no other agreement with BBC apart from

lhbr 25 Palin-cross 72

the agreement to provice them with the scripts and our performing agreement.

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Q Have you seen a recording of the proposed ABC scheduled for December 26th?

A Yes.

Q When did you see it?

A Yesterday morning.

Q Where did you see it?

A ABC Television.

Q Was that made available to you by ABC Television?

A Yes.

Q During the course of that viewing didyou also have a list of cuts that were made to the program to work with?

A Yes.

Q Who supplied that to you?

A ABC.

Q Is Exhibit 10 a copy of the list to which you are making reference?

A Yes.

Q During the course of the viewing did you make your own notes with respect to what you had seen?

A Yes.

Q The notes that had been given to you, the list, Exhibit 10, in conjuction with the viewing that you had yesterday, is that an accurate listing of the cuts that were made?

A The one that I looked at is not, no.

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Q Can you identify the inaccuries which you found in the listing supplied by ABC of the cuts?

A I think if I can just mention the ones that Mike didn't mention, is that all right?

Q Okay.

A There is one, No. 8, the "Animated sequence of grumpy man trying to sleep." What they have done is removed the lines "God" as mentioned there. What has happened is the entire sound track has then been pulled up so that the sound effects are now out of sync, so we are hearing sounds before we actually see the action. Completely, as far as I am concerned, loses three good laughs.

Also at the very end of it, the gent in question falls asleep and starts snoring. That's been cut, and that also got a chuckle.

MR. FORLENGA: May I interrupt at this point, your Honor? The synchronization will probably be corrected. That was an error.

A (Continuing) No. 13, the words "private dick," when Hamlet is asked what he wants to be rather than being Hamlet, that he wants to be a private dick, and the words are just not there. I think "private" may be there. I can't remember that. But it is not there "private dick," he is not there.

As Mike mentioned, the woman hanging clothing

in Epsom after No. 18, I think he has, after No. 19 -- no, sir. That's my mistake. That's all I think that is different than what's previously been given.

Q Is there anything in the Hamlet cut with respect to hats that has not been mentioned on this?

A Hats?

Q Yes.

A I am not sure. No, I don't really remember that.

Q With respect to the cuts that have been made by ABC, do you have any objection to them?

A Yes.

Q What are your objections?

A I think they totally distort the nature of Monty Python, what we have tried to do. They are presenting a program and presenting sketches that are claimed to be our work, and they are not our work, they are not our intention, they have been Bowdlerized, the meaning has been taken out.

The outrageous nature, which is major part of Python -- Python's reputation has grown because it is outspoken, it is honest, it is outrageous, it could even be offensive; all of these things are taken out. It seems almost step by step the elements that are those are removed.

We are left with pap, as far as I am concerned.

Q When your television programs have been shown on other television stations in the United States, have all of these offensive, unique Python elements been included in the program?

A Yes.

Q There has been no cutting of those programs at all?

A No.

Q You believe that you will be damaged if the ABC Special is shown as scheduled on December 26th?

A Yes.

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Q In what respect do you believe you will be damaged?

A I think in the way we were damage by the first one. I think one of the important things to me about what has happened with Monty Python in the states is there are a lot of people who have come to believe in Python as a form of honesty, I suppose, as opposed to what is normally presented on television.

Here is a show that is outspoken, says what it wants to say, does extraordinary things, takes all

sorts of chances, is not out to sell corn plaster, or anything; it is out to entertain, surprise, enlighten, even, the people that are viewing it.

By putting out the show we are talking about, I think it is a very compromising show. I think it completely -- I think it could be read, and I think the first show was read, this is my impression from people I have spoken to, things I have heard, that Monty Python has finally accepted the standards of commercial television as opposed to our own standards.

It has always been our standards that have determined what we do and why we do it, and it seems by the popularity of the show and all the things that are going on with it, that we have been proved right to at least some people. Not everybody in the world -- we never intended to impress everybody in the world.

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THE WITNESS: I really think there is an element of integrity in what we have done. Good, bad or indifferent, it doesn't really enter into it. It seems to me, it is an element of i. :grity. I think the show that is going out compromises that integrity.

It is very recognizable as something we haven't done in the past, and it makes our believeability totally -- it brings it all into question. I think that's one of the things that's been very important to us. It's been the fun of it all, really.

I also think that in the case of the show going out in areas that haven't actually seen Monty Python, there has been a lot of press, there has been a lot of publicity about Monty Python in Newsweek and lots of national papers. This is the first chance for people to see it.

They are going to look at this thing and say, "So what"? That may be the end of their relationship with Monty Python. That may be it in a nutshell. They look at it, "Well, what was that all about?"

The few people they heard say "It is awful," "Righto, awful."

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I think if we want to get down to class financial matters, I think the show going out can actually hinder people from going to see our films, which in fact is where we make our money. We don't make our money on television. Our prime source of money in the states has been Monty Python, The Holy Grail," the records and the book tha's about to come out. The television show is actually not involved in much money. Very little, in fact. I think a couple of thousands pounds each for the show -- $2,000 for the show, I think is what it is. Something like that.

I can say that people watching the show are going to be totally -- their impression of Monty Python, it is not Monty Phython. They may judge they like it, maybe not. I don't know. I assume they are not going to like what they see or will not impress them to see what else we do, and that's money.

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Q Have you ever had any contact with BBC other than the writer's contract?

A Yes.

Q What is the nature of that?

A It is a performing contract which I believe is identical to the one that Mike has.

MR. FRIED: Do we have that contract here?

THE COURT: I thought I previously observed that I didn't think it was relevant to what I had to decide. That is an actor's contract; is that right?

THE WITNESS: Yes.

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MR. FRIED: I want to argue as a matter of law that there were certain conditions which affect their right to the relief they are asking for, your Honor, because they had given that to BBC.

That is the entire point of our defense here, that when they entrust BBC with the right to make deletions, additions and editorial changes and BBC in turn appoints their agent and their agent in turn gives that right to ABC, then I don't see how the plaintiffs can com into court and ask your Honor for a preliminary injunction on that basis.

THE COURT: And where do you find given BBC the right to make the changes you are talking about after the film has been completed?

jhas Gilliam - cross 89

MR. FRIED: That is what I say is the lack of proof on their part. They have no right to enjoin BBC.

THE COURT: Fine. But that is not a matter of contracts between Mr. Gilliam --

MR. FRIED: These positions do fortify that position, because BBC constantly makes the changes and they are given that right --

THE COURT: Before it's all finished, before it's in the can, as I have used the expression and it is used in other contexts in the entertainment industry. I don't see how it can be argued that because BBC has the right to do that up to a certain point they have a right to do it forever.

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MR. OSTERBERG: It would be my intention now to have the Court view the original 30 minute segment entitled "L. E. War," to be followed by the abbreviated segment

entitled "L. E. War," the first one coming from Time Life, which is under subpoena and it's been represented to me has brought that videotape here, and the second coming from ABC, which also was under subpoena to bring it here this morning.

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MR. PALIN: There has been a change made in the

order from what you are about to see. The ABC program will begin with a trailer section.

THE COURT: Are we going to see the ABC program first?

MR. PALIN: No, your program first. What they have done is take a portion which is a film trailer, which occurs half way through this take we are about to see, they have taken that out in a truncated form and placed it at the top of the show, in a place which it was never intended to be.

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MR. PALIN: Can we stop a minute? At the end of the dance, when they do that bit and the thing with their arms, part of ABC's cuts, in fact, cut number 4, says, "14 seconds deleted at end of military trial sequence to delete shots of men showing backsides to camera as well as obscene arm gestures ."

This is one of the things where I feel that they have submitted the word -- they put in the word obscene. We don't hold that is an obscene arm gesture. That is an inaccuracy in the list of cuts.

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MR. PALIN: There are several points concerning the trailer. One is that it was replaced at the beginning of the show, where it no longer makes sense, because it only makes sense after you have heard about trivializing the war. So it doesn't make sense where it has been repositioned.

Also all the commentary has been taken out and the cuts have been made within the trailer, which make no sense.

So it's been cut and repositioned and generally kind of messed around.

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THE COURT: Now we go to the cut version?

MR. GILLIAM: Yes. Can we discuss that now or not?

THE COURT: Yes. If there is anything either side wants to say now --

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MR. GILLIAM: Just to comment on the laughter track, it's a live audience, it's not canned laughter, because we have often been accused of canned laughter. Those are real people watching the show and laughing

unprompted.

THE COURT: That would be true even on the ABC version, would it not?

MR. GILLIAM: Yes.

MR. PALIN: The laughter cannot be rearranged and sometimes a joke will be removed and the laughter kept.

MR. GILLIAM: That's one of the things that happens when you make a cut, you end up with a laugh over a non-funny area, which makes us look like doofs, it seems to me.

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Q Having seen the two showings in sequence, the ABC version and the uncut version, do you have additional comments you would like to make to the Court with respect to the cutting that was done?

A Yes.

I just wanted to clarify, make clear what we are thinking about when we talk about the integrity or the entity of the show. In that particular show I think we saw that things were very intricately interwoven. Things kept referring back to themselves, people went back on television whom we had seen earlier. At one point we saw the ladies watching themselves on television watching a television

set, showing the beginning of the film. The whole show, a major part of that show -- it wasn't necessarily the funniest part of the show, but I certainly think it was a necessary part. We spent a lot of time, a lot of effort including that and making the show that shape. Before I think we were talking mainly about comedy things where we suffered, but I think the form was destroyed. Our shows tend to be very strong on form. We think of each one as a show, try to interrelate all these things, so the form is as important to the name of Monty Python as the laughs. It is slightly like the painting Dejeuner Sur L'Herbe, the Manet painting with the nude in the proper French picnic. If you remove the nude, whih I think ABC has, and they presented the nude, then you get cheap laughs or cheap sensations out of it. You have lost the whole concept of the painting, which is the conjunction between the two things, the nude in a very bourgeoise picnic setting. It is a thing like has happneed with our show. We have been presented with a show with blackout sketches.

Funny, they are, some of them, but it isn't what we made.

The second point is the business of three shows being made into one show. It is 90 minutes long.

1hbr 3 Gilliam-direct-cross

These shows were written as 30 minute shows. In our opinion they were funny as 30-minute shows. 90 minutes of that material I find can become very tedious. I think that happened on the first one. People actually started switching off at a certain point because it isn't meant to be seen that way. The Python film was written as a 90-minute film. I think it works on that level. It is 90 minutes long. The pacing is different. Again, a new form has been created out of the material we provided. I think that's all I really want to say.

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1hbr 11 Burns-direct

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Q Are you the Richard Burns who has submitted an affidavit in opposition to the motion for a preliminary injunction in this proceeding?

A Yes, I am.

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Q I refer to paragraph 7 of the affidavit. You make a reference to ABC spending a considerable amount of money and making a number of commitments based upon the

lhbr 12 Burns-direct 112

agreement expressed in the letter that you annex as Exhibit A to the agreement between ABC and Time-Life. How much money are you referring to?

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jnjb 1 Burns-direct 113

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THE WITNESS: All right. First of all, under the agreement we have with Time Life Films we are obligated to pay them $65,000.

THE COURT: For this showing?

THE WITNESS: For two showings of the second program, the program the portion of which we have seen.

THE COURT: All right.

THE WITNESS: That's an existing contractual obligation that ABC has.

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We also have to consider the implication of a negative outcome in this proceeding with respect to the second run that we still have of the first program, the October 3rd program. The license fee there similarly was $65,000 and we would--in effect, we might be losing a second run. I know it is not at issue in this proceeding, but I think it's fair to consider that that may be involved if we lose this program.

THE COURT: Mr. Burns, in that connection, has any date been set for the second showing of the first program?

THE WITNESS: My understanding, your Honor, is that it has not yet been scheduled. I believe Mr. Shanks could better testify to that.

So it's quite possible that we--if we lose the second play of the first program, the October 3rd program, we would have to acquire another program to take its place. Now, we almost never buy single runs of programs, so we would have to go into the market and buy a substitute for the first program as well, that is, for the repeat broadcast, which let's say would be another $80,000.

Now, our Time Life contract also gives us at

the option of ABC the right to acquire broadcast license in another 13 programs.

THE COURT: Of Monty Python?

THE WITNESS: Yes, your Honor. And this would be through the 1978-79 season, that is, those would be the times during which we could broadcast them.

There is a price set out in the contract at $75,000 for the first five programs and then $85,000 for the last eight programs. Now, that is an aggregate of $1,055,000.

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THE WITNESS: Our projection of the price that we would have to pay for programming through the 1978-79 season would be--again, this is probably a conservative figure, but the figure that we used to work these figures up is $90,000 each.

Now, the difference between 12 times 90,000 and the aggregate of the contract price for the 13 option programs, the difference is $115,000.

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Q With reference to paragraph 12 you state ABC will suffer irreparable harm if a preliminary injunction is granted. Will you specify the facts upon which you

made that statement?

A Well, I think that the nature of the harm flowing from an injunction would be irreparable. Not so much--putting aside for a moment the question of money damages, ABC would be subjected to a lot of unfavorable publicity which I don't think under the circumstances would be deserved. It would create problems for us in our dealings with other distributors and other packagers. It would indicate to the people who supply programs to us a certain sloppiness, perhaps, in our organization in that we might fail to check out the rights in program material that we are given. It would have other effects that I think generally could be grouped under the heading of putting us in an unfavorable light, both with the Government and with the public.

Q Those are the only facts you can give us at the present time to support that statement?

A I could go on for several hours about it. I think most of them are sort of obvious, and, as I said, can be summarized as things that reflect unfavorably on ABC's business judgment and artistic integrity.

Q Has ABC ever cancelled programs before?

A In what sense do you mean cancel?

Q Cancelled a network program, scheduled it and

1hjb 7 Burns-direct 131

then cancelled it.

A We have acquired rights to programs that ended up not going on the air. I assume that there have been instances of programs that were scheduled and then cancelled. I can't think of a specific one offhand.

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there is an implication that there is cutting and editing.

THE COURT: Mr. Fried, I don't want to prevent you from making as good an argument as you can. I thought about the Preminger case because there are not all that many cases that we can be guided by here.

I find a distinct difference between the Preminger and this case in that the Preminger case involved a vehicle which was made as a regular production movie to be shown in a movie house and it was reasonable it seemd to me to assume that if you sold that for television you are going to have to do something to be able to produce it on television, whereas the material that we are deal-

ing with here, of course, was produced for television and it is considerably less reasonable to assume that there would be further editing.

It is only fair for me to let you know that I have that reaction to the comparison of the Preminger case. In the light of that, I will be glad to hear what you have to say.

(Continued on next page.)

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MR. FRIED: Perhaps I am trying that presumption a little further, because I say that your Honor can take judicial notice of the fact that we people in London or in any other part of the world are doing business with United States networks they too are presumed to know that when it is used for television it has to be edited in accordance with the standards and practices of the FCC regulations.

THE COURT: I really don't think that I can take judicial notice of the fact that the BBC or anybody else would necessarily assume that this film had to be edited on ABC when it didn't have to be edited on WNET or, as I understand it, on commercial stations in Las Vegas or Houston.

So I am unwilling to take judicial notice of that fact, Mr. Fried.

I don't say it may not be a fact of life that occurs, but I don't think I can take judicial notice that it must occur.

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jhb-8 Webster-direct 143

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Q Mr.Webster, you were subpoenaed by the attorney for the plaintiffs, were you not, to appear today?

A Yes, yesterday afternoon.

THE COURT: Were you subpoenaed in person or as a person from BBC?

THE WITNESS: A subpoena and a check was left on my desk in my office. I was out to lunch at the time.

THE COURT: Was it addressed to you?

THE WITNESS: It was addressed to the BBC and I am the director of the BBC in this country. Therefore, I responded.

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jhb-15 Webster-direct

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Q Mr. Webster, do you know what agreements there

jhb-16 Webster-cross

are betweenBBC and the plaintiffs in this action?

A No.

Q Were you pursuant to the subpoena that was served upon you requested to bring documents with you this morning?

A Yes.

Q Did you bring any such documents with you?

A Nothing other than the subpoena.

Q Is that because you have no such documents called for by the subpoena?

A Yes.

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Q Mr. Shanks, I would like to direct your attention to the harm which ABC would suffer if the program were taken off the air.

First of all, are you familiar with the affiliate relations and the network at ABC?

A Somewhat, yes. I am not directly involved with that area.

Q How would taking this program off the air on this short notice affect your station relations and the affiliate relations?

A I think it would be damaging. It is one of the key forms of distribution for a network, of course, through its affiliates, nad therefore we are very dependent on them. They get very cranky when we do make program schedule changes. They do happen from time to time. They are not supposed to happen within four weeks of the broadcast date.

THE COURT: What do you mean by "not supposed to"?

THE WITNESS: That I think is spelled out in our affiliate agreements, that all program changes should certainly be advised at least four weeks prior to the change of date.

In this case that would be precluded, of course.

Some of the reasons for that are fairly obvious, I think.

The TV Guide deadline, for instance, which is a very key advertising outlet for networks and affiliates, is on a three-to-four-week deadline, and it is one of the primary advertising formats that we have for bringing attention to the programs that we do put on.

So a change within a week does create irritation in the affiliates and in the management. So it causes corporate harm and certainly personal harm, too, that I am not running my ship properly.

The reasons are obvious. The show that will come in to replace it will not be advertised, and whatever its natural audience might be, we would not have an opportunity to try to alert to the fact that that show would be on.

THE COURT: Have you advertised this show as coming on?

THE WITNESS: Yes, sir. So the people who would be interested in Monty Python will certainly be annoyed and irritated with the program that is not there.

THE COURT: How have you advertised so far?

THE WITNESS: Through no paid print advertising,

but listings, your Honor, in TV Guide and in distributing this.

THE COURT: What about your own network?

THE WITNESS: Yes, on air promotions for it.

MR. FRIED: One last question.

Q Are you familiar with what the effect will be upon the advertisers?

A I am not sure. I know that there were inquiries way back as to when the Monty Python programs would air because they have what we call a target audience appeal, to a younger college and teenage audience, and there are certain advertisers who are particularly interested in that marketplace.

What happened to that and whether there are sponsors for the night of the 26th who are in specifically for the Python Show, I do not know.

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Q Are there any further elements of irreparable harm which cannot be measured in dollars and cents if --

A I think in terms of the network, yes.

THE COURT: Are you trying to think of Mr. Burns' outline, is that what you mean?

THE WITNESS: Yes, but one area he left out. It is a very small creative community that we deal with, your Honor, and reputation is highly important to all of us personally and as corporations.

I think corporations have identifiable personalities as well as individual talents or groups of talent. I would assume ABC was approached in the first place because it has a reputation for innovation in these programming areas.

I think that certainly will be damaged if a public case is made that we are tampering with artists' work and censoring them, which is the word I see in print frequently.

So I think it does do irreparable damage because then the creators will say, "Oh, don't go to ABC, let's go to NBC or CBS or this programmer," and that is incalculable, really.

THE COURT: It will get around, anyway, won't it? To the extent of whether people agree with how I rule here?

THE WITNESS: But they would have --

THE COURT: I suppose if I made an emphatic

statement that I thought you did a terrible thing, that would not help you very much?

THE WITNESS: Not at all, but it might help with the same weight that the publicity has generated, that the people have a chance to judge for themselves.

THE COURT: I can't quite agree with you, Mr. Shanks, that you can judge by yourselves if you don't see both versions.

I don't think there is anything you can do about it.

THE WITNESS: Not according to Maxwell Perkins. I am sure he and Thomas Wolfe had similar disagreements.

THE COURT: I am not even talking about that. I am talking about whether you can really judge whether or not the edited version is the same as the other without seeing the other.

THE WITNESS: No.

THE COURT: It is a philosophic discussion which won't help us get it settled.

THE WITNESS: But one could make a decision as to whether it is entertaining.

THE COURT: I think it is very entertaining, but I really don't think that's the end of the question I am asked.

* * * * * *

jh:mg 5 Hansen-direct 183

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Q Mr. Hansen, what is your occupation?

A I am Director of Programming at Time Life Television.

* * * * * *

jh:mg 8 Hansen-cross 186

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Q Did you receive any documents as a result of an inquiry from or to BBC with respect to this lawsuit?

A Of an inquiry to BBC?

Q To BBC. Did BBC send you any documents?

A Yes, I was copied on documents from the BBC and to the BBC concerning this issue.

Q Do you have those documents with you?

A I do not.

THE COURT: What documents did you receive?

THE WITNESS: Telexes.

THE COURT: Except for messages in connection with your current discussions, did they send you any documents such as copies of contracts and things of that sort?

THE WITNESS: No, sir, they did not.

THE COURT: Gentlemen, you will have to understand that I have not had the benefit of talking to all my scriptwriters or having this material edited one way or another, but because I know that the parties are exceedingly anxious to have a decision one way or the other so that they can either live with it or appeal immediately, and that time is of the essence, I will dictate my decision at this time which constitutes my findings of fact and conclusions of law under Rule 65 of the Federal Rules of Civil Procedure.

I find that both of the parties here, as I said at the outset of the hearing this morning, have proceeded in good faith. I have no reason to believe that the plaintiffs do not sincerely hold the view that they are entitled to have their work shown as they created it.

I have no doubt either that the American Broadcasting Corporation or its subsidiary believed in good faith at the time that it made the changes that it had the right to make those changes and that it was serving the interests of the public as well as of its own company in doing so.

I will observe, although it is dictum, that it seems to me that the procedures of the industry ought

to be tightened as a result of a misunderstanding of this kind. Of all industries there should not be a failure of communication within the communications industry.

The law favors the proposition that a plaintiff has the right under ordinary circumstances to protection of the artistic integrity of his creation.

In this case I find that the plaintiffs have established an impairment of the integrity of their work. Though the revised version, which I have no doubt was edited by those concerned with care and a desire to preserve the original quality of the work, does breathe the originality and fantasy and comedy of the uncut version, it nevertheless has caused the film or program in my view to lose its iconoclastic verve.

If, to use the analogy used by one of the plaintiffs in his testimony, the nude remains a character in Dejeuner sur L'Herbe, she is very much in the background. That the reasons for the changes which were made were made in good faith and for what may be considered sound professional requirements does not minimize the loss in esthetic or philosophic punch.

Furthermore, the cut is a heavy cut. It is a cut of 22 minutes out of 90 minutes, which comes near the

lh:mg 3 201

border at which one might say that the cuts, if not fatal, certainly made it very difficult for the patient to live in good health.

Finally, the damage that has been caused to the plaintiffs is irreparable by its nature.

Nevertheless, there are important reasons why I will decline to grant the injunction as requested.

The first is that I believe there is a serious question of mixed fact and law as to who owns the copyright on the program we are talking about as distinct from the script, and as to the effect of that ownership, if it is not in the plaintiffs.

I have reviewed the contract bearing in mind Mr. Osterberg's argument, and it seems to me that it conveys and purports to indicate only that the plaintiffs are conveying the right to the script.

It talks in terms of the work, but the work is the script, not the program.

Second, there is a question of fact and law as to whether BBC and Time Life distributors are or are not indispensable parties to this litigation.

While I may say that if that factor alone existed, I do not think it would interfere with my granting the injunction; it is certainly something to be considered

lh:mq 4

in the balancing of the scales.

Next, it is clear that ABC will suffer significant financial loss if it is enjoined, though conceivably it might recover its monetary damages, if they occur, from Time Life or BBC, or both.

ABC, however, has demonstrated that it will also suffer some irreparable damage if it is enjoined, including damage to its relations with affiliates, an implication of sloppiness of management, which I do not believe would be justified in the circumstances, and, finally, being put in an unfavorable light with the public and the Government.

Lastly, there is a somewhat disturbing casualness with which the plaintiffs pursued this matter until they brought it to court. I am referring to the events that preceded the 20th of November, not what has taken place since the 20th of November.

Under the circumstances, the motion for a preliminary injunction for the relief requested, namely, to stop the show, is denied.

However, I am willing to consider, although I do not know precisely how to phrase it, a motion for more limited relief. I have in mind the possibility, if the plaintiffs would like to make such a motion, for

some kind of statement to be made on the show with regard to the content of the show: A disavowal by the plaintiffs or some explanation of the process that has occurred here, if the plaintiffs feel that that would be the next best thing or better than nothing with regard to their professional standing and their concerns growing out of the revision of the program.

Of course, such an application would have to be made quickly. I would give it the most serious consideration, and I am telling ABC right now that I would, and I would be likely to grant such relief, as long as it was sensibly phrased and did not, of course, consume too much of the time of the program, and I don't see why it would.

I ask Mr. Osterberg to confer with his clients on that and I don't think I can do anything further about it today, but I want ABC also to know that I will accede to such a request if it does not go beyond the requirements which I have just specified and to consider to what minor extent they might have to adjust the show to accommodate such a statement.

Mr. Osterberg, do you want to react to that point at all?

MR. OSTERBERG: Yes; may that application

lh:mq 6

if it is to be made be made by noon Monday in writing or does the Court require an oral application?

THE COURT: I am willing to act on an oral application. However, the one thing that I think that must be in writing is the proposed text of whatever statement is to be made and an estimate of how long it would take to run the statement, such material as that.

In other words, what really needs to be in writing here is not the legal things but the television things.

It can be done by noon on Monday.

I would ask you, of course, to see whether it would be possible for your people and the ABC people to agree on something of that kind, since I have indicated that I would approve it if it was reasonable.

So I would hope that they could agree with you as to what is reasonable.

Is there anything further at this time, gentlemen?

MR. FRIED: My silence is not to be taken as any agreement or otherwise. I just don't know what the position of ABC would be. I would have to consult with them.

THE COURT: I certainly understand that.

* * * * * *

THE COURT: I do wish to make a few comments though.

With the possible exception of your last point, which is that such an order is unconstitutional, which I don't believe it is, it seems to me that the other arguments that you have made are arguments which were made during the course of the earlier proceedings.

I perfectly understand the good faith with which ABC has proceeded up to this point and I am quite willing to state it again for the record now so that the Court of Appeals, should you go there, will understand that I find that ABC acted in good faith.

I have attempted by following the procedure which I have to do justice in a situation in which it seemed to me that both parties have acted in good faith. I may be wrong on the theory of law, on which we seem to disagree, but I believe that the plaintiffs have rights to the protection of their literary endeavors which have survived

jhas 8

the contract with BBC and that even if it should turn out to be proven, and I don't regard it as conclusively proven, although it is very likely, that BBC owns the copyright to the show, the program, that is, I do not believe that that is the end of the matter as far as the rights of the plaintiffs are concerned.

* * * * * *

Selected Exhibits to Proceeding of December 19, 1975.

Exhibit 3, Letter August 1, 1975.

Python

1st August 1975

David Spiller Esq.
BBC Enterprises
Villiers House
The Broadway
London W5 2PA

David Spiller Esq

Further to my letter of 9th June concerning Monty Python and the American compilation, I gather that the BBC have in fact done a deal with ABC Television for two ninety minute compilations. If this is so I assume that the programmes are made up of all six episodes of series IV and that no alterations have been made to them. I would be grateful if you would confirm this to me.

Yours sincerely,

Jill Foster

Exhibit 4, Letter August 6, 1975.

BBC ENTERPRISES
VILLIERS HOUSE, THE BROADWAY, LONDON W5 2PA
Tel: 01-7438000 . Cables: Telecentre London
Telex: 265781 or 934678

6th August, 1975

Jill Foster,
Fraser & Dunlop Scripts Ltd.,
91 Regent Street,
LONDON,
W1R 8RU

Dear Jill Foster,

Monty Python Series IV

Thank you for your letter dated 1st August 1975.

The situation regarding the A.B.C. deal for Monty Python is that all six episodes of the fourth series will be shown in two 90 minutes shows i.e. 3 episodes in each.

I have been assured by our people in New York that each episode will be shown in its entirety.

Yours sincerely,

D.M. SPILLER
D.M. Spiller

BBC TV Programme Sales . BBC Records
BBC Production Facilities . BBC TV &
Radio Merchandising
British Broadcasting Corporation
London . England

Exhibit 5, Letter September 5, 1975.

5th September 1975

David Spiller Esq
BBC Enterprises
Villier House
The Broadway
London W5 2PA

Dear David Spiller:

Thank you for your letter of 6th August concerning the American sale of MONTY PYTHON SERIES IV. I was perfectly satisfied with your answer until, in my bath yesterday, it occurred to me that out of this ABC slot of ninety minutes, something in the region of twenty four minutes will be devoted to commercials. How then I wonder can each episode be shown in its entirety?

Yours sincerely,

Jill Foster

Exhibit 6, Letter September 12, 1975.

BBC ENTERPRISES
Villiers House, The Broadway, London W5 2PA
Tel: 01-7438000 . Cables: Telecentre London
Telex: 934678 or 265781

Ref: JJ/DS Ext. 566 12th September, 1975

Fraser & Dunlop (Scripts) Ltd.,
91 Regent Street,
London,
W.1.

For the Attention of Ms. Jill Foster
Dear Ms. Foster,

Monty Python: Series 4

I have consulted our Sales staff about the query raised in your letter of 5th September, 1975.

We do not know the situation regarding the length of commerical breaks that ABC intend to make, nor indeed if the programme is receiving sponsorship as opposed to spot advertising. We can only reassure you that ABC have decided to run the programmes 'back to back', and that there is a firm undertaking not to segment them.

Yours sincerely,

David Spiller
David Spiller
Business Department.

cc. Harbottle & Fitch
Monty Python

Exhibit 10, ABC, Special No. 2.

MONTY PYTHON — ABC Special No. 2

First BBC Show Used — "L.E. War"

1. First edit: Main title plus lead-in of 1:09 moved up from approximately 13:40 in show to head of program for program identification purposes. Audio commentary over lead-in scenes removed to delete such phrases as "The story of one man's love for another in drag," and "the secret love for bi-sexuals."

2. Second edit: In scene in war office regarding trivializing of war starting at approximately 4:40 6 seconds removed in four separate cuts to remove expressions "Good Lord," "Good God," "Oh My God," and "Bastards."

3. In military trial scene, cut of 1:40 starting approximately 2:27 into scene to delete entire reference to special gaiters presented to soldier by regiment for sexually obliging them. Phrases deleted include: "He used to make them happy in little ways," "He used to oblige them," "Did he touch them?," "He used to ram things up their . . . ."

4. Fourteen seconds deleted at end of military trial sequence to delete shots of men showing backsides to camera as well as obscene arm gestures.

5. In montage sequences of war (2:21 long) including main title of show, moved to head of special, with 1:12 removed to delete audio references as itemized in paragraph one above and certain visuals: navy officer dressed as woman and naked man playing piano.

Exhibit 10, ABC, Special No. 2.

6. In skit of television programmers two separate cuts (:06 total) made to delete "They must be damn new" and "Up your mother next door."

7. Final 1:38 of skit of television programmers, beginning with entrance of man in wheelchair with sword in head, deleted to eliminate offensive references to handicapped individuals. Also deleted was replay of television program showing members of military court with backsides to camera.

8. Animated sequence of grumpy man trying to sleep. 9 seconds deleted to remove lines "God!" and two "hells" from "What in hell's going on."

9. Scene of upper class family in drawing room discussing "tinny" words. :03 deleted from beginning of sequence to remove two "damns" from "Croquet hoops look damn pretty" and "Croquet hoops look frightfully damn pretty."

10. In same sequence 1:06 removed starting with "Intercourse", "Later, dear", to delete section devoted to words with sexual references including "pert thighs," "erogenous zone" (repeated three times), "tit, tit, tit, tinny," Accompanying video of father being aroused by these words and mother dousing him with bucket of cold water also eliminated in this cut.

11. Final skit in "L.E. War" of two women watching TV. Several cuts totalling :53 deleted to eliminate repeated scenes of woman remotely controlling TV through man dressed in Indian garb. Through increasingly violent electric shocks the man is forced to change channels.

12. Titles eliminated from final scene in "L.E. War" of army lieutenant singing to WAC.

Exhibit 10, ABC, Special No. 2.

Second BBC Show Used — "Hamlet"

13. Sequence of Hamlet in psychiatrist's office. Two cuts, one of approximately 2:52 and another of :03, to delete all graphic references to love-making, such as "she's all ready for it," "great big tits," "Got her legs up on the mantlepiece," "You've got your tongue down her throat," "You've got her sweater up."

14. Scene of policeman and man sitting in wingback chairs on bridge over Thames. One cut of approximately :47 of woman being beaten up by policeman and policeman talking with man on bridge deleted essentially for timing purposes.

15. Same sequence. Ending eliminated to cut scene of couple making love on sidewalk. Following sequence depicting couple in bed with father also eliminated for continuity reasons. Program identification opening also deleted as unnecessary. Also cut is following scene of number of people in bed watching TV program in which Ophelia says to Hamlet: "Got a girl in the bed, her legs up on the mantlepiece." This cut runs approximately 4:16.

16. In sequence of headless fighter one cut of :45 to eliminate closeup of sewn-on head and second head being brought in in a bag; part of this delete made to accommodate visual continuity.

17. 2:01 cut to eliminate fight between hospital patients and attendants in hospital.

18. :14 eliminated to delete two shots of dead birds and intercut in scene in park of woman feeding birds.

Exhibit 10, ABC, Special No. 2.

19. From sequence of TV talk show featuring three Queen Victorias four scenes of :15 length eliminated to delete reference to "girl on the couch, legs on the mantlepiece"—also continuity cut.

20. Cartoon sequence of boy flying balloon shot of naked woman eliminated, plus exploding woman.

21. Closing sequence of multiple Queen Victorias and Hamlet leading into end credits eliminated both because of redundancy and homosexual references.

Third BBC Show Used — "Michael Ellis"

22. Main titles and end credits eliminated for reasons of continuity.

23. Michael Ellis seen outside department store, Twenty-five seconds eliminated to delete woman kneeing doorman in groin.

24. In ant-buying sequence :02 deleted to eliminate word "bitch" from "King George bitch."

25. In first secene between Michael Ellis and his mother :14 cut to eliminate reference to tiger: "He used to go through four Jehovah's Witnesses a day."

26. In scene between waiter and patron in ant restaurant :06 eliminated and close cut of Michael Ellis saying: "That's a stroke of luck, Marcus" transposed to facilitate deletion of ant waiter touching ant patron's buttocks as part of ant language.

27. :03 cut was made in scene between mother and Michael in television room to eliminate "Oh, Christ."

Exhibit 10, ABC, Special No. 2.

28. In kitchen where Michael leaves to return ant to department store :02 removed to delete mother's line "His droppings are enormous" in references to polar bear invading neighbor's garden.

29. In sequence of poetry reading and entrance of Queen Victoria, there are three separate cuts amounting to :22. The first is to eliminate "I ask you not to soil the carpet" and the insertion of intercut of one of the characters in the scene saying "Shelly," also included to facilitate this deletion. The second cut eliminates the sentence "I did ask you about the carpet" for continuity purposes. The third cut eliminates a reference by Queen Victoria to the German expression for "shit."

30. Scene in complaints department. :14 eliminated to remove visual of man dressed as doorman fondling under skirt of woman.

31. Sequence of discussion on how to end show. :12 scene removed of homosexual commentator discussing program.

32. Main title and end credits repositioned from head of Michael Ellis program to close of special.

Exhibit C, Agreement October 16, 1973.

VILLIERS HOUSE, THE BROADWAY,
LONDON W5 2PA
Tel: 01-7438000 Cables: Telecentre London
Telex: 22182 or 934678

16 October 1973

Time Life Films,
Time Life Building,
1271 Avenue of the Americas,
New York,
N. Y. 10020,
U.S.A.

Gentlemen:

This letter when signed and countersigned shall constitute the agreement between Time Incorporated and Time Life Films, Inc. of Time Life Building, 1271 Avenue of the Americas, New York 10020 (hereinafter called "Time Life Films") and the British Broadcasting Corporation of Broadcasting House, London W1A 1AA (hereinafter called "BBC") acting through their BBC Enterprises Department (hereinafter called "Enterprises") for the distribution of BBC television programmes in the territory noted in paragraph 2 below either for television broadcasting or non-theatric exhibition.

1. It replaces the original agreement dated 30 October 1970.

2. Time Life Films will undertake the distribution of BBC television programmes, and will use its best endeavours to promote sales, in the United States, its territories and possessions, hereinafter the "territory", on behalf of Enterprises in accordance with the terms of this agreement and in accorlance with sales

and business policies of Time Life Films, consistent with the interests of Enterprises as laid down by the General Manager of Enterprises.

3. "Distribution" as used in this letter shall include, within the territory:

   (i) The licensing of programmes to any party including networks, television stations, sponsors, advertising agencies or other exhibitors of programmes by or for commercial or public television CATV, closed circuit TV, pay or subscription TV.

   (ii) The sale or hire of prints or video tapes of programmes for exhibition, to non-paying audiences in educational institutions (e.g. universities, colleges, schools, evening institutes) clubs or other organisations of an educational, cultural, religious, charitable or social nature (e.g. drama study groups, film societies, churches, professional associations, women's institutes) hereinafter called "non-theatric" distribution. Prints or tapes may be supplied either direct to such users of through recognized film societies and film libraries.

   (iii) The sale or hire of programmes covered by this agreement for non-theatric distribution in video, cassette, video disc, on wire or other similar process now known or developed during the period of this agreement.

"Non-theatric" distribution under clauses 3 (ii) and 3 (iii) above shall not include the sale or hire of programmes for use in the home, unless Enterprises has such home rights.

Exhibit C, Agreement October 16, 1973.

4. All such licenses, sales or hirings shall be in accordance with the terms of Enterprises' current agreements with those various Guilds, Unions and other Copyright holders, of which Time Life Films has been advised by Enterprises.

5. Although Time Life Films is not appointed as exclusive agent, it is the intention of Enterprises that Time Life Films shall distribute all the BBC television programmes which become available for sale in the territory, but the following may be excluded:

   (i) Programmes or series in which distribution rights in the territory are vested in others as the result of co-production or co-financing agreements between the BBC and third parties.

   (ii) Programmes or series in which distribution rights in the territory are subject to revenue sharing agreements between the BBC and third parties; revenue sharing for this purpose does not include payment to performers, authors and other programme contributors.

9. The BBC will be positively identified as, the producer of all BBC programmes in any catalogues, advertisements, press releases or other publicity and promotional material, Time Life Films receiving due credit as distributors in such documents. No distribution credits will be permitted on BBC Programmes sold for television broadcasting, but an appropriate credit, approved by Enterprises will be permitted on BBC programmes sold or hired for non-theatric use. Time Life Films will not be permitted to adopt, edit, or otherwise abridge or alter any BBC programmes without the consent of Enterprises, except for insertion of

commercials, applicable censorship or governmental (such as the Federal Communication Commission) rules and regulations, and National Association of Broadcasters and time segment requirements.

10. Enterprises undertakes to provide Time Life Films with details of programmes which Enterprises wishes to make available for sale or hire in the territory, together with representations and warranties as to all details (including amounts) of the appropriate residual payments and the duration of rights for any transmission in the territory which will be observed by Time Life Films. Enterprises will also provide each week at its discretion a number of helical scan tapes of BBC programmes for evaluative viewing by Time Life Films. Time Life Films undertakes to return these tapes to Enterprises after viewing. In addition, Enterprises undertakes to provide copies of the publicity material issued by Enterprises when programmes are offered for sale or hire, including glossies. No charge will be made by Enterprises for these services but associated freight and carriage costs will be the responsibility of Time Life Films.

11. To facilitate television and non-theatric distribution Enterprises agrees to provide Time Life Films with films or video tape versions of available programmes on request by Time Life Films. Enterprises will invoice Time Life Films for films or tapes provided in this way in accordance with the attached Rate Card. This Rate Card reflects current actual costs and Enterprises reserves the right to amend these charges in the light of cost changes as and when necessary. One month's written notice will be given by Enterprises to Time Life Films of changes in Rate Card charges but

ad hoc consideration will be given jointly by Head of Business Administration, Enterprises, and Business Manager, Time Life Films, if any increase is likely to have a significant effect on any deal under discussion. All such material ordered by Time Life Films will be despatched carriage forward and any agents' or customs' charges in the territory will be the responsibility of Time Life Films.

13. Time Life Films will be charged by Enterprises for any additional services provided for Time Life Films other than those outlined in paragraph 10 above (for instance, additional promotional material, editing or production effort, video tape or film screening sessions) when facilities or staff not belonging to Enterprises are used. These charges will be considered technical charges hereunder.

14. Time Life Films will pay to Enterprises percentages of annual gross income from sales or hire of BBC television programmes in the territory as set forth below:

18. This agreement will commence as from 1 January 1974 and will apply to all material supplied and all sales and hirings transacted after that date. It will continue in force until terminated under the following conditions:

    (i) By either party at its sole discretion upon giving 18 months notice in writing on or after 31 December 1975. Enterprises will still provide Time Life Films with new programme material under the terms of this agreement during the 12 months following the written notice of termination.

(ii) At any time by the mutual agreement of both Enterprises and Time Life Films.

(iii) By Enterprises at its sole discretion if Time Life Films shall commit a material breach of the provisions of this agreement and does not take steps to remedy such breach within 30 days of receiving written notice from Enterprises so to do, provided that if Time Life Films advises Enterprises during such 30 days that a dispute or disagreement exists as to such alleged breach, this agreement shall not be cancelled but in such event Enterprises and Time Life Films agree, in good faith, promptly to utilise their efforts to resolve same. Enterprises will not be obligated to provide Time Life Films with any new programme material during the 30 day period or the period during which the declared dispute or disagreement is being resolved.

20. Time Life Films will keep proper books of account showing all income and expenditure received or incurred in respect of distribution of BBC programmes under this agreement and these books of account will be made available to Enterprises at their request, at reasonable times and places.

22. Any termination of this agreement shall not cancel any indebtedness of Time Life Films to Enterprises.

23. Time Incorporated or Time Life Films will not associate the name of the BBC with any promotional or exploitation activity of Time Incorporated or Time Life Films other than in connection with the activities of Time Life Films arising from this agreement without the prior consent of Enterprises.

24. Enterprises represents and warrants that:

    (i) The programmes have been or shall be produced in accordance with rules, regulations and requirements of all applicable Unions, Guilds or Copyright holders.

    (ii) Enterprises has the right to make and perform this agreement, and has secured or will secure prior to the delivery of the programmes all rights necessary to enable Time Life Films to exercise its rights hereunder without incurring obligations or liabilities to anyone, except payment of clearance and residual costs as elsewhere herein set forth.

28. This agreement shall be subject to the approval of the Board of Management of the British Broadcasting Corporation and of the Board of Directors of Time Incorporated. If written notification to the contrary is not given by either party by 31 October 1973 such approval shall be deemed to have been granted and the agreement will come into force on 1 January 1974.

29. This agreement shall be governed in all respects by the laws of England.

Yours faithfully,

BBC Enterprises

Peter Dimmock

Date 16th October, 1973.

Time Life Films

Lee Heffner

Date 10/16/73.

Supplemental Order on Plaintiffs' Application for a Preliminary Injunction.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the supplemental motion of plaintiffs, with respect to their application for a preliminary injunction and the scheduled broadcast by defendant on December 26, 1975 of a Monty Python special, it is

ORDERED, that defendant not proceed with the broadcast unless the following announcement is broadcast as an integral part thereof in the following manner.

1. This text shall be shown by a constant image for the duration of 20 (twenty) seconds with a voice over reading of the text: "The members of Monty Python wish to disassociate themselves from this program which is a compilation of their shows edited by ABC without their approval."

2. The announcement shall be inserted just prior to the commencement of the body of the special and immediately following other opening announcements and commercials.

3. The announcement shall be repeated in its entirety and in the same manner during the first commercial break in the body of the special.

Dated: New York, New York
December 22, 1975

s/ M E L
U.S.D.J.

Defendant's Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

NOTICE IS HEREBY GIVEN that defendant American Broadcasting Companies, Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from the order of December 22, 1975 of the United States District Court for the Southern District of New York by the Honorable Morris E. Lasker, requiring defendant to insert certain language in its broadcast of a program scheduled for December 26, 1975, dated December 22, 1975.

Dated: New York, New York
December 22, 1975

Yours, etc.

HAWKINS, DELAFIELD & WOOD

By: s/ CLARENCE FRIED
A Member of the Firm
Attorneys for Defendant

To: ABELES, CLARK & OSTERBERG
Attorneys for Plaintiffs

Plaintiffs' Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

NOTICE IS HEREBY GIVEN that plaintiffs in the above identied action hereby appeal to the United States Court of Appeals for the Second Circuit from so much of the order entered herein on December 19, 1975 as denied plaintiffs' application for a preliminary injunction against common law copyright infringements, Lanham Act violations and unfair competition.

Dated: New York, New York
December 22, 1975

ABELES CLARK AND OSTERBERG

By ROBERT C. OSTERBERG
A Member of the Firm
Attorneys for Plaintiffs

To: HAWKINS, DELAFIELD & WOOD
Attorneys for Defendant

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TERRY GILLIAM, GRAHAM CHAPMAN, TERRY JONES, MICHAEL PALIN, JOHN CLEESE and ERIC IDLE, individually and collectively performing as the professional group known as "MONTY PYTHON.",

Plaintiffs-Appellants-Appellees,

against

AMERICAN BROADCASTING COMPANIES, INC.,

Defendant-Appellee-Appellant.

AFFIDAVIT OF SERVICE

INTERLOCUTORY APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Juan Delgado, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 596 Riverside Drive, New York New York
That on February 27, 1976, he served 1 copies of Appendix

on

PRYOR CASHMAN & SHERMAN, Esqs.,
Attorneys for Defendant-Appellee-Appellant
410 Park Avenue
New York, New York 10022

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

Juan Delgado

Sworn to before me this
27 day of February, 1976

John V. D'Esposito

JOHN V. D'ESPOSITO
Notary Public, State of New York
No. 30-0932350
Qualified in Nassau County
Commission Expires March 30, 1977